

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

UNITED STATES OF AMERICA . CASE NO. 5:17-HC-2008-BO  
V. . ELIZABETH CITY, NC  
RICHARD SCHMIDT . JANUARY 10, 2018  
. .  
. . . . .

TRANSCRIPT OF 4248 BENCH TRIAL  
BEFORE THE HONORABLE TERRENCE W. BOYLE  
JUDGE, UNITED STATES DISTRICT COURT

APPEARANCES:

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dictation.

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## I-N-D-E-X

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1       **THE COURT:** Good morning.

2       **MR. TARLTON:** Good morning, Your Honor.

3       **MR. JAMES:** Good morning, Your Honor.

4       **THE COURT:** This is United States versus Schmidt, a 4248

5       hearing.

6       **MR. JAMES:** That's correct, Your Honor.

7       **THE COURT:** Are we ready to proceed?

8       **MR. TARLTON:** Yes, Your Honor.

9       **MR. JAMES:** If I could just do a couple of house cleaning

10       matters.

11       **THE COURT:** Yes.

12       **MR. JAMES:** First, I have been authorized by Dr. Watkins --

13       she is one of the experts in this case. I've been

14       authorized to tell the Court this. She had a child

15       recently, and she needs to express at around 11:30, if

16       that's okay with the Court.

17       **THE COURT:** I couldn't hear you.

18       **MR. JAMES:** She needs to express breast milk --

19       **THE COURT:** Okay.

20       **MR. JAMES:** -- at about 11:30, 11:30 to 12:00 o'clock, if

21       it's okay with the Court.

22       **THE COURT:** Okay. Whatever.

23       **MR. JAMES:** The second thing, Your Honor, I've spoken with

24       Mr. Tarlton, and we have agreed, one, to the entry of the

25       notebooks as exhibits in Court.

1       **THE COURT:**   Okay.

2       **MR. JAMES:**   That's the first thing.   The second thing, we  
3       have stipulated as to I believe Prongs 1 and 2.

4       **THE COURT:**   Okay.

5       **MR. JAMES:**   On this Adam Walsh matter.   That is the first  
6       prong, Mr. Schmidt has previously engaged or attempted to  
7       engage in an act of child molestation and suffers from a  
8       serious mental illness, abnormality or disorder.   And I  
9       believe that's what has come out in all the reports from  
10      every expert in the case, whether it is the Respondent's  
11      experts or the Government's experts, said that Mr. Schmidt  
12      suffers from a pedophilic disorder, sexually attracted to  
13      males.   So I think that's it.   Oh, and we also stipulate to  
14      the Court that each of these experts are in fact experts.

15      **THE COURT:**   Do what?

16      **MR. JAMES:**   That each of the experts who are testifying are  
17      in fact experts.

18      **THE COURT:**   Yeah, okay.

19      **MR. JAMES:**   Without needing further qualification.

20      **THE COURT:**   Okay.   Are you ready to call your first  
21      witness?

22      **MR. JAMES:**   Yes, sir.   We are going to call Mr. Schmidt  
23      first.

24      **THE COURT:**   Okay.

25      **MR. JAMES:**   The Respondent.

**RICHARD SCHMIDT, RESPONDENT, SWORN**

DIRECT EXAMINATION

**BY MR. JAMES:**

Q. Good morning, Mr. Schmidt.

A. Good morning.

Q. Mr. Schmidt, I'm going to walk right into it.

Mr. Schmidt, you were convicted on August 30, 1984 in a guilty plea to a third degree sexual offense. Is that correct?

A. That's correct.

Q. And you were 41 years old at the time; is that correct?

A. That's correct.

Q. And that was your first arrest; is that correct?

A. Yes.

Q. You were sentenced on October 1, 1984 to three years imprisonment suspended up to six months and three years probation. Is that correct?

A. Yes.

Q. And you also had some provisions, which was to attend and successfully complete Johns Hopkins School of Medicine Biosexual Clinic?

A. Not at that time. Not after the first arrest. I think we discussed that before. It was after the second conviction that I was to go to Johns Hopkins.

1 Q. Okay. All right. The victims in that case were two  
2 boys, ages 10 and 9 years old; is that correct?

3 A. Yes.

4 Q. You were also convicted on May 10th, 1985 of third  
5 degree sexual offense and fourth degree sexual offense; is  
6 that correct?

7 A. Yes.

8 Q. You were sentenced on October 16, 1985 to two years on  
9 the third degree sexual offense and eight years on the  
10 fourth degree sexual offense; is that correct?

11 A. Yes.

12 Q. All time was suspended with credit for time served and  
13 you were put on five years probation. Is that correct?

14 A. Yes.

15 Q. And the special condition was that you would report to  
16 Johns Hopkins and agree to Depo-Provera. That's the  
17 injection to lower your testosterone. Do you remember  
18 that?

19 A. Yes.

20 Q. The victims in that case were boys who were ten and  
21 eleven years old; is that correct?

22 A. Yes.

23 Q. You were discharged from the Johns Hopkins Sex  
24 Offender Treatment Program on October 22, 1986 when staff  
25 saw you in Patterson Park, a park in Maryland, with boys.

1 A. When I was seen in Patterson Park I was observing a  
2 soccer game.

3 Q. A staff member from Johns Hopkins saw you; and,  
4 therefore, you were discharged from the program?

5 A. That's correct.

6 Q. And you weren't supposed around boys at the time?

7 A. (Nod head). That's correct.

8 Q. And you're nodding. You have to be audible, for the  
9 record.

10 A. Okay.

11 Q. Thank you. Now the second offense that you were  
12 convicted of, you committed that offense after you had been  
13 arrested on the first offense but not sentenced yet; is  
14 that correct?

15 A. Yes.

16 Q. And when you were convicted -- excuse me -- when you  
17 were arrested on the first offense your entire world was  
18 destroyed, wasn't it?

19 A. I didn't hear.

20 Q. Your entire world was destroyed, wasn't it?

21 A. Things were pretty bad, yes.

22 Q. Because prior to that you had been -- you had owned a  
23 Radio Shack store.

24 A. Yes.

25 Q. And you lost that store, you lost your home, your

1 mortgage was foreclosed on your home. You lost associates  
2 and friends. Isn't that correct?

3 A. Yes.

4 Q. In fact at the time that you engaged in the  
5 molestation with the ten or eleven year old boy from the  
6 May 10, 1985 conviction you used sex as a coping mechanism.  
7 Isn't that correct?

8 A. Well, actually I hadn't lost everything at that point.  
9 It was after the second arrest that I lost everything  
10 because I was still at that time I owned a video store in  
11 Calvert County where that arrest took place. So I still  
12 had some substance to my life at that point, so I can't say  
13 that it was just a coping mechanism, because I was not  
14 completely destitute at that time.

15 **THE COURT:** Let me ask some questions.

16 You were born in '42?

17 A. Yes, sir.

18 **THE COURT:** And where were you born?

19 A. Born in Baltimore, Maryland.

20 **THE COURT:** And is that where your family lived?

21 A. Yes.

22 **THE COURT:** Did you grow up as a child in Baltimore?

23 A. Part of the time was in Baltimore.

24 **THE COURT:** Where else?

25 A. I lived in Severna Park.



1       **THE COURT:** Is that in Maryland?

2       A. Yes, near Annapolis.

3       **THE COURT:** Did you go to grammar school?

4       A. Yes.

5       **THE COURT:** What kind of a grammar school, public school?

6       A. Public school, yeah.

7       **THE COURT:** When were you in the eighth grade, in the '50s?

8       A. Uh, yeah.

9       **THE COURT:** Think about it.

10      A. Yeah.

11      **THE COURT:** Did you go to high school?

12      A. Yes.

13      **THE COURT:** Where?

14      A. I went to a private school, Severn School, in  
15      Maryland.

16      **THE COURT:** What's the name of it?

17      A. Severn.

18      **THE COURT:** Severn?

19      A. Yes.

20      **THE COURT:** Is that the name of the river?

21      A. Yes.

22      **THE COURT:** And where was that school?

23      A. That was in Severna Park where I lived.

24      **THE COURT:** And where is that near?

25      A. It is in between Annapolis and Baltimore.

1       **THE COURT:**   Okay.  Did you graduate from high school?

2       A.     Yeah.

3       **THE COURT:**   What did you study in high school?

4       A.     It was general.

5       **THE COURT:**   Pre-college or trade?

6       A.     Pre-college.

7       **THE COURT:**   Did you graduate in '59?

8       A.     '61.

9       **THE COURT:**   '61.  Were you late for your class?

10      A.     I transferred from a high school and I didn't have  
11      enough credits.

12      **THE COURT:**   So you should have graduated earlier?

13      A.     Should have graduated in '60.  I graduated in '61.

14      **THE COURT:**   And then what did you do when you graduated  
15      from high school?

16      A.     I went to the University of Maryland.

17      **THE COURT:**   You were 19 or so?

18      A.     Yes, 19.

19      **THE COURT:**   Where is it, in College Park?

20      A.     Yeah.

21      **THE COURT:**   And you were a freshman there?

22      A.     Yes.

23      **THE COURT:**   Did you live in a dorm?

24      A.     Yes.

25      **THE COURT:**   And what did you study?  What were you

1 intending to study?

2 A. Well, I studied -- majored in agriculture and arts and  
3 science.

4 **THE COURT:** Did you stay there, did you finish?

5 A. No. I stayed there a year and a half.

6 **THE COURT:** Then you left?

7 A. Then I left, yes, sir.

8 **THE COURT:** And what happened when you left?

9 A. When I left I went to a community college.

10 **THE COURT:** Where was that?

11 A. That was in Anne Arundel County, for one semester.

12 **THE COURT:** Were you registered for the draft?

13 A. Well, they didn't -- they didn't give draft notices if  
14 you were in college.

15 **THE COURT:** Okay. And so you had a deferment?

16 A. I had a deferment until I left the community college.

17 **THE COURT:** And when did you leave the community college?

18 A. What year?

19 **THE COURT:** Was it '64?

20 A. I think it might have been '64 or '63.

21 **THE COURT:** Okay. Were you in the service?

22 A. Yeah.

23 **THE COURT:** What branch.

24 A. Army.

25 **THE COURT:** And when did you go in the Army?

1 A. That was 1964.

2 **THE COURT:** And were you an enlisted man?

3 A. I enlisted, yes.

4 **THE COURT:** No, I mean you weren't an officer; you were an  
5 enlisted man?

6 A. Exactly.

7 **THE COURT:** So you were an E-1, E-2, E-3, E-4?

8 A. Right.

9 **THE COURT:** How high up did you go?

10 A. I went up to E-4.

11 **THE COURT:** Okay. Did you complete your service in the  
12 Army?

13 A. Yes, three years.

14 **THE COURT:** And when were you discharged?

15 A. In '66.

16 **THE COURT:** Okay. And where were you living then?

17 A. Pardon?

18 **THE COURT:** Where were you living then?

19 A. I was -- you mean when I got out of the Army?

20 **THE COURT:** Correct.

21 A. I went back to my parents' house.

22 **THE COURT:** So you were 22 then?

23 A. Yes.

24 **THE COURT:** Okay. Then did you continue your education?

25 A. Yes. I went to Towson University.

1       **THE COURT:**   Where?

2       A.     Towson University.

3       **THE COURT:**   Towson?

4       A.     Towson University.

5       **THE COURT:**   In Maryland.

6       A.     That's a university in Baltimore, Maryland, yes.

7       **THE COURT:**   Did you graduate from there?

8       A.     Yes, I did.

9       **THE COURT:**   What kind of degree did you get?

10      A.     I had a degree in education, a Bachelor of Science  
11      degree.

12      **THE COURT:**   Okay.   And then did you get a job?

13      A.     Yes.

14      **THE COURT:**   As a teacher?

15      A.     Yes.

16      **THE COURT:**   In the public school?

17      A.     Yes.

18      **THE COURT:**   Where?

19      A.     Anne Arundel County Public School.

20      **THE COURT:**   Okay.   And that was in '67?

21      A.     It was later than that, because it took me several  
22      years because I was working part time when I went to  
23      college, so it would have been in the early '70s.

24      **THE COURT:**   All right.   Thank you.   Go ahead.

25      **EXAMINATION BY MR. JAMES:**

1 Q. Just following up on the Court's questions, you were  
2 an elementary school teacher from '73 to '79; is that  
3 correct?

4 A. I didn't quite hear you. I'm a little hard of  
5 hearing.

6 Q. Okay. You were an elementary school teacher from 1973  
7 to '79; isn't that correct?

8 A. Yes, correct.

9 Q. And when you graduated from college you had a Bachelor  
10 of Science in Elementary Education?

11 A. Yes.

12 Q. You also coached children; is that correct?

13 A. Yes.

14 Q. You had also worked as a lifeguard during the  
15 summertime when you were not teaching; is that correct?

16 A. Yes.

17 Q. And this occurred -- about '73 you were -- that was  
18 when you were in your '30s. Is that --

19 A. Yes.

20 Q. Approximately? Okay. And during the summertime when  
21 you were not teaching, in your '30s, you had a sexual  
22 relationship with a 13 year old boy; is that correct?

23 A. During the time that I was not teaching?

24 Q. In the summertime, during the summertime. You know,  
25 you have teachers teach from the fall until sometime in May

1 or June and then everyone is off for their summer, right?

2 A. Yes.

3 Q. And during those summer months you were working as a  
4 lifeguard.

5 A. Correct.

6 Q. At the beach?

7 A. Right.

8 Q. And you met a 13 year old boy during that period of  
9 time; isn't that correct?

10 A. Yes.

11 Q. And you engaged in sexual contact with that boy; isn't  
12 that correct?

13 A. Yes.

14 **THE COURT:** Were you attracted to women or not?

15 A. Somewhat, but not a strong attraction.

16 **THE COURT:** Did you have relations with any women when you  
17 were --

18 A. I had a few girlfriends and did date.

19 **THE COURT:** Did you --

20 A. Not extensively.

21 **THE COURT:** I'm sorry?

22 A. Not extensively.

23 **THE COURT:** Did you have intercourse with them?

24 A. No.

25 **THE COURT:** You never did?

1 A. No.

2 **THE COURT:** Have you ever?

3 A. No.

4 **THE COURT:** Okay.

5 Q. To follow up on the Court's question, you did not  
6 report to any of the experts that you had a sexual  
7 attraction to women; is that correct?

8 A. I didn't --

9 Q. You did not report to any of the experts that you had  
10 a sexual attraction to women. Isn't that correct?

11 A. Well, I'm sure I didn't do that. I don't know whether  
12 I was asked that question directly. The only attractions I  
13 had was during my teenage years. After that I didn't have  
14 sexual attractions insomuch as I was dating.

15 Q. Well, you have never had an intimate relationship with  
16 a woman?

17 A. That's correct.

18 Q. You have never had -- aside from a sexual intimacy,  
19 you have never had a personal relationship with a woman;  
20 isn't that correct?

21 A. Only occasionally dating. Nothing interpersonal or  
22 anything involving a serious relationship, that's correct.

23 Q. Would you be surprised that -- I don't believe in any  
24 of the expert reports there is any reference to you dating  
25 a woman. Would you be surprised to know that?



1 A. I don't know whether I was ever asked that question or  
2 not.

3 Q. Now, when you were having sexual contact with the 13  
4 year old boy, what attracted you to the boys is the fact  
5 that their skin was smooth, they looked young and their  
6 body was hairless; is that correct?

7 A. Yes.

8 Q. And the sexual contact you had with the boys included  
9 you and the boys being naked and you would rub them; is  
10 that correct?

11 A. Yes.

12 Q. Rub their genitals. Is that correct?

13 A. Again?

14 Q. Rub their genitals.

15 A. Yeah.

16 Q. Is that correct?

17 A. Yes.

18 Q. All right. You would lay on top of them?

19 A. Yes.

20 Q. And this molestation occurred in your home; isn't that  
21 correct?

22 A. Yeah.

23 Q. And you would -- stayed with the 13 year old boy for  
24 maybe a year, maybe two years, in terms of having sexual  
25 contact with him; is that correct?

1 A. Could have been up to three years.

2 Q. Could have been up to three years having sexual  
3 conduct with the boy.

4 A. Or several years. I always had an ongoing  
5 relationship.

6 Q. And in fact during the months when you were a teacher  
7 and teaching, you cannot say -- you've got no report that  
8 you've ever had sexual contact with a boy during the time  
9 you were teaching?

10 A. That's correct.

11 Q. Now, in '79 and '80, that's when you opened up the  
12 store. You had a partner at that point, Mr. Snaub?

13 A. Yes.

14 Q. And you began sponsoring a lacrosse team; isn't that  
15 correct?

16 A. Yes.

17 Q. And in fact the ten year old boy that was your first  
18 offense would come into the store. Isn't that correct?

19 A. Yes.

20 Q. All right. And you believed that the boy was  
21 interested in you because he would come into the store and  
22 show just general interest in you?

23 A. Yes.

24 Q. And based on that you invited the boy to spend the  
25 night with you; isn't that correct?

1 A. Yes.

2 Q. And at one point you took the boy home to his mother  
3 from lacrosse practice; is that correct?

4 A. Yes.

5 Q. And you met the boy's mother?

6 A. Yes.

7 Q. And you asked the boy's mother if the boy could have  
8 permission to stay with you?

9 A. Yes.

10 Q. And the boy had no father in the home; isn't that  
11 correct?

12 A. Correct.

13 Q. And you would agree that the boy came from what you  
14 would consider a lower middle class family?

15 A. Yes.

16 Q. And the boy had visited the store about five times  
17 before you molested him; is that correct?

18 A. Yes.

19 Q. And the boy brought his nine year old brother along  
20 for the overnight stay; is that correct?

21 A. Yes.

22 Q. And you sexually molested both boys?

23 A. Yes.

24 Q. You were arrested around April 26, 1984. Is that  
25 correct?

1 A. Yes.

2 Q. And that was your first arrest?

3 A. Yes.

4 Q. Do you remember at your deposition stating that your  
5 world fell apart at that time?

6 A. Can you repeat that?

7 Q. Do you remember at your deposition at page 54 you  
8 stated that your world fell apart at that time, after the  
9 first arrest?

10 A. Yes.

11 Q. And you were held for, I believe, a couple of hours,  
12 and then you were released.

13 A. Yes.

14 Q. Then you went on to sexually offend with the second  
15 set of victims, the ten and 11 year old boys. Isn't that  
16 correct?

17 A. Yes.

18 Q. And those boys also came to the store that you owned?

19 A. It wasn't the same store.

20 Q. Oh, this was a different store?

21 A. Yes.

22 Q. All right. And the molestation occurred which you  
23 were fondling the boys' body, rubbing their legs.

24 A. Yes.

25 Q. Their bare chests?

1 A. Did they what?

2 Q. Their bare chests, putting your hands under their  
3 clothing.

4 A. I recall it being on the back.

5 Q. You were then released and you had a -- you were  
6 arrested in 1985 on a number of cases that were nolle  
7 prossed. They declined prosecution after awhile. Do you  
8 recall that?

9 A. Yes.

10 Q. And in one of the matters you told Dr. Hastings that  
11 there was a bricklayer you met who had three sons.

12 A. Yes.

13 Q. I'll use their initials. One was an eleven year old  
14 named LK. There was an eight year old whose initials were  
15 CK. There was another child whose initials were RK. You  
16 slept in the basement of that bricklayers home where the  
17 boys were; is that correct?

18 A. I was living there?

19 Q. Yes.

20 A. Yeah.

21 Q. And you tried to kiss LK on the mouth and hug him; is  
22 that correct?

23 A. Never kissed anybody on the mouth.

24 Q. Did you tell Dr. Hastings when he read your summary of  
25 that you agreed that that was accurate, that you tried to

1 kiss LK on the mouth?

2 A. I don't recall Dr. Hastings asking me or mentioning  
3 that I kissed him on the mouth.

4 Q. All right. You asked LK to sleep with you in the same  
5 bed?

6 A. Yes, I did.

7 Q. When LK refused -- you were sad when he refused to  
8 sleep in the same bed with you. Is that correct?

9 A. I guess I could say that, yes.

10 Q. All right. You told LK it was okay for boys to put  
11 their ding dongs in each other's butt holes.

12 A. I never said that.

13 Q. You took LK shopping to try to convince him to sleep  
14 in the same bed with you.

15 A. Took him shopping?

16 Q. Shopping, yes.

17 A. Yes.

18 Q. You also asked CK to sleep with you in the same bed?

19 A. CK?

20 Q. Yes. The boy's initials were CK. You asked him to  
21 sleep in the same bed with you.

22 A. There was just one and I believe it was CK that we  
23 were talking about before.

24 Q. All right. You gave CK what they call a wet Louie?

25 A. Yes.

1 Q. Remember that?

2 A. Yes, I do.

3 Q. And a wet Louie is where you put your tongue in the  
4 boy's ear; is that correct?

5 A. That's correct.

6 Q. And you would scratch CK's back with your beard?

7 A. Repeat that.

8 Q. You had a beard at that time; is that correct?

9 A. Oh, yes.

10 Q. And you used your beard to scratch his back?

11 A. Yes.

12 Q. Isn't that correct?

13 A. I believe so.

14 Q. And on one occasion CK wanted to drive and you put him  
15 on your lap; isn't that correct?

16 A. I don't recall putting anybody on my lap. I do recall  
17 the boy asking if he could assist with the driving. And I  
18 do recall when we were stopped that he was on the side.  
19 Perhaps he was sitting on my lap for a minute or two. I  
20 had to drive and would not allow him to continue.

21 **THE COURT:** Were you molested as a young boy?

22 A. No, Your Honor.

23 **THE COURT:** You never were?

24 A. No.

25 **THE COURT:** Okay.

1 Q. When CK was on your lap, you gained an erection; isn't  
2 that correct?

3 A. No.

4 Q. Do you remember telling Dr. Hastings that?

5 A. No, I do not.

6 Q. That you got an erection?

7 A. I did not tell him that.

8 Q. Now you spent a number of months in jail while that  
9 case was pending before it was ultimately dismissed; is  
10 that correct?

11 A. Yes.

12 Q. Now the third conviction that you sustained was on  
13 April 1, 1987, and that was after a jury trial on five  
14 counts of sexual offense in the second degree and four  
15 counts of sexual offense in the third degree. Is that  
16 correct?

17 A. Yes.

18 Q. And the victim in that offense was a 12 year old boy.

19 A. Yes,

20 Q. And this same victim was a boy that was one of the  
21 nolle prossed cases earlier on; is that correct?

22 A. Yes.

23 Q. And that molestation occurred over a number of  
24 weekends; isn't that correct?

25 A. Yes.



1 Q. And you left a key in your mailbox so the boy could  
2 get into your residence?

3 A. Yes.

4 Q. And the boy slept in the bed with you; isn't that  
5 correct?

6 A. Yes.

7 Q. You fondled the boy's genitals?

8 A. Yes.

9 **THE COURT:** Have you had consensual adult sex with men?

10 A. No.

11 **THE COURT:** You have not?

12 A. No.

13 **THE COURT:** Okay.

14 Q. With regard to that, you and this same boy had sex on  
15 three other instances before; is that correct?

16 A. Yes.

17 **THE COURT:** So your entire sexual experience has been  
18 directed at male pre-puberty children?

19 A. Up to age 18. From approximately 10 to 18 with a  
20 primary -- my primary area was between 13 and 15.

21 **THE COURT:** Okay. And that's it? Those are the only  
22 partners or objects of your sexual expression?

23 A. Yes.

24 Q. Well, just as a point of clarification, in your second  
25 conviction one of the boys was a nine year old; is that

1 right?

2 A. That's right. He asked my interest, my range of  
3 interest. The nine year old was brought along by the older  
4 child.

5 Q. But you still molested him though?

6 A. Right.

7 Q. The boy in the 1987 conviction, you paid that boy  
8 money; isn't that correct?

9 A. Not for sex I didn't.

10 Q. You considered that boy a hustler?

11 A. He was -- he was a street -- he was street savvy. He  
12 lived on the streets of Baltimore. I don't know -- you  
13 would have to give me the definition of what you might call  
14 a hustler.

15 Q. Well, you knew that boy would have sex with men for  
16 money; isn't that correct?

17 A. I knew he had done that before, yes.

18 Q. Right. And during the molestation you ejaculated the  
19 boy manually; is that correct?

20 A. Yes.

21 Q. All right. And you performed fellatio on the boy?

22 A. Fellatio?

23 Q. Yes.

24 A. When he testified -- the reason I went to trial for  
25 that was because that happened to be a second degree sex

1 offense, and I did not believe that I had performed  
2 fellatio. In the testimony he said that I put my lips on  
3 his penis, which I interpreted it as kissing. So I didn't  
4 know whether that would be considered fellatio or not. But  
5 apparently the court considers that fellatio.

6 Q. You were sentenced to 18 years; isn't that correct?

7 A. Yes.

8 **THE COURT:** This was in state court or federal court?

9 A. State.

10 Q. And, in fact, from your very first conviction there  
11 was a probation violation, which two years was tacked on to  
12 that. Isn't that correct?

13 A. I believe so.

14 Q. All right. So when you were released from prison in  
15 July of 2000, you were 57 years old at the time; isn't that  
16 correct?

17 A. Yes.

18 Q. All right. You also met with a parole officer and you  
19 were told you had to stay away from children. You knew  
20 that, right?

21 A. I knew that, yes.

22 Q. And despite knowing that you began -- you were at a  
23 pool and you began associating with a boy who was either 11  
24 or 12 years old, correct?

25 A. When exactly are you talking about now?

1 Q. After you were released from prison in July of 2000 --

2 A. Yes.

3 Q. All right?

4 A. Yes.

5 Q. You were 57 years old at the time, right?

6 A. Right.

7 Q. You were told by your parole officer you had to stay  
8 away from children; you knew that? You were not to  
9 associate with children

10 A. Right.

11 Q. You knew that?

12 A. Yes.

13 Q. And during that time, while you were on parole and in  
14 violation of that parole, you became acquainted with a boy  
15 who was either 11 or 12 years old, right?

16 A. Yes.

17 Q. And I believe you met the boy at a swimming pool?

18 A. Yes.

19 Q. Okay. And you met the boy's mother, right?

20 A. Yes.

21 Q. And the boy's mother was an alcoholic who subsisted on  
22 public assistance; is that correct?

23 A. Yes.

24 Q. And once again, the boy was from a fatherless home; is  
25 that correct?

1 A. Yes.

2 Q. You were sexually attracted to the boy?

3 A. At that time I can't say that I was sexually  
4 attracted.

5 Q. All right. Well, if you recall from your deposition  
6 at page 87 you said you were sexually attracted to the boy?

7 A. I guess I found some attraction there then.

8 Q. All right.

9 A. But I didn't perform any action that would be  
10 considered sexual. I had no sexual contact with him, so  
11 that's what I meant by not having a sexual interest in him  
12 or being sexually attracted.

13 Q. Well, my question was were you sexually attracted to  
14 the boy, and your answer was, yes; isn't that correct?

15 A. Somewhat.

16 Q. You purchased the boy items including lacrosse  
17 equipment and shoes?

18 A. Yes.

19 Q. All right. You took the boy to track meets?

20 A. Yes.

21 Q. You visited the boy in his home?

22 A. Yes.

23 Q. You entered the boy on a wrestling team?

24 A. Yes.

25 Q. You did things for the boy's mother. Because she

1 didn't drive you brought her things, you drove her places?

2 A. I helped the family out, yes.

3 Q. And the boy's mother trusted you?

4 A. Yes.

5 Q. Now, within eight or nine months of that meeting or  
6 association with the boy you became aware of the fact that  
7 parole began questioning or local police officials began  
8 questioning the boy about his relations with you; is that  
9 correct?

10 A. I think it was longer than eight months. It was  
11 closer to a year.

12 Q. Well, do you recall at deposition page 86 saying that  
13 your association with the boy lasted between eight and nine  
14 months?

15 A. Okay. I thought it was a little longer than that.

16 Q. Local officials, police officials, questioned the boy,  
17 and the boy's mother at one point actually called you and  
18 told you that the police had spoken to the boy; is that  
19 correct?

20 A. Yes.

21 Q. And right around that same time about 2:00 a.m., the  
22 police came to your door and knocked on your door, right?

23 A. Yeah.

24 Q. And you didn't answer the door?

25 A. Correct.

1 Q. And you were on parole at the time, right?

2 A. Yes.

3 Q. And once they left you fled your apartment? Isn't  
4 that correct?

5 A. Yes.

6 Q. You never came back to the apartment?

7 A. Right.

8 Q. You had funds because when your mother passed away you  
9 inherited about \$70,000?

10 A. Yes.

11 Q. So you then went to an associate or a friend that you  
12 knew who was a longshoreman and told him you would like to  
13 leave the country, right?

14 A. Yeah.

15 Q. And that person put you in contact with a friend of  
16 his in the Philippines?

17 A. Yeah.

18 Q. And you then traveled to the Philippines at that  
19 point; is that correct?

20 A. Yeah.

21 Q. And stayed with that person for a couple of days  
22 before you settled in a town about 50 miles outside of  
23 Manila; is that correct?

24 A. Yes.

25 Q. Now you were 57 - 58 years old at that time?

1 A. Probably 60 at that time.

2 Q. Okay. Probably about 60 at that time, right? And  
3 within four months of arriving in the Philippines you  
4 sexually molested a boy; is that correct?

5 A. Yes.

6 Q. Once again, that boy was poor, right?

7 A. Was what?

8 Q. That boy was poor?

9 A. Yes.

10 Q. Came from a poor family. You got the mother to trust  
11 you, right, the boy's mother?

12 A. Yes.

13 Q. You were giving them things, some money; is that  
14 correct?

15 A. I supported the family, yes.

16 Q. You supported the family, right. And the authorities  
17 in the Philippines were aware of your sexual molestation,  
18 and you had charges on you; is that correct?

19 A. And I did what?

20 Q. You were charged in the Philippines; is that correct?

21 A. Yes.

22 Q. Thereafter you went to Cambodia?

23 A. Yes.

24 Q. And once you were in Cambodia once again you sexually  
25 molested children; is that correct?



1 A. One.

2 Q. Well, you still sexually molested a child; isn't that  
3 correct?

4 A. Yes.

5 Q. And this despite the fact that you were -- you had a  
6 charge in the Philippines. You couldn't lay low; you went  
7 to Cambodia; is that correct?

8 A. Couldn't what?

9 Q. You couldn't lay low. You didn't just go to Cambodia  
10 --

11 **THE COURT:** You couldn't avoid sex.

12 **MR. JAMES:** Yes, thank you, Your Honor.

13 Q. You couldn't avoid behaving in sexual contact with  
14 this boy while you were in Cambodia?

15 A. Well, there's a story involved with that that I think  
16 I've related it to everybody, including you, during the  
17 deposition, that I was -- I had to leave the Philippines in  
18 order to renew my visa, and I had to do that every 30 days.  
19 When I got to Cambodia and was in the process of renting an  
20 apartment, there were children in the area that came into  
21 the home and played video games and watched television. I  
22 wasn't involved with them at all. However, the ICE agent  
23 through what they call government -- NGO -- watch for  
24 people that are walking around that are in the company of  
25 local children. And at that time the ICE agent along with

1 the NGO arrived at my apartment along with the Cambodian  
2 police and came in and wanted to do a search of the  
3 apartment to see if there were any children there. There  
4 were none there. However, a lock was put on my door and so  
5 I was going to be arrested anyway while they looked in the  
6 neighborhood for any boys that were in the neighborhood  
7 that may have been involved with me. The next day I was  
8 released from custody as the boys in the neighborhood  
9 denied that there was any sexual activity at all, and I  
10 tried to go back to the apartment and the apartment was  
11 locked, and I was told that the ICE agent was still going  
12 to investigate. So at that time I met -- not knowing what  
13 to do, loose on the street, not able to get into my  
14 apartment, I did meet a boy who told me he was 15, on the  
15 street, 15 years of age, and I did become involved with him  
16 sexually, but we were -- he was what I would call a street  
17 hustler also. And at that time we did go to a motel room,  
18 and I was in the process of teaching him English. They  
19 found paper, pencil and all the work that we were doing  
20 together. We were there for about 45 minutes. Then the  
21 police came busting in. They found us not naked, not nude,  
22 not doing any -- having any sex. They found no evidence of  
23 it. However the intention for me at that time was to  
24 involve in sexual activity with him. And there was minor  
25 touching and fondling, but we did not actually have what I

1 would call a sexual, complete sexual episode.

2 Q. All right. Well, several things. First, when you  
3 arrived in Cambodia after facing charges in the  
4 Philippines, what were you doing having boys coming into  
5 your place in Cambodia at all?

6 A. Well, because that's Cambodia. That's a whole  
7 different situation there. First off -- and I need to say  
8 that I had a rationale at the time that I could become  
9 involved with anybody provided I didn't perform an illegal  
10 act. And I enjoy teaching, I enjoy being around children,  
11 and I've always enjoyed sponsoring people and helping  
12 people. So my rationale at the time was that I could still  
13 be around them. And this wasn't the United States where I  
14 was denied, you know, on a parole violation of any sort. I  
15 was under the impression that I could be around children as  
16 long as I didn't commit a crime.

17 Q. All right. So after you were arrested in Cambodia you  
18 were deported back to the United States; is that correct?

19 A. Correct.

20 Q. And you entered two guilty pleas, one to -- there was  
21 a ten count indictment, and you entered guilty pleas to  
22 Count 7 and Count 10, correct?

23 A. Correct.

24 Q. And in Count 10 that was being a United States citizen  
25 engaging in foreign commerce to have illicit sex; isn't

1 that correct?

2 A. The charge -- there were two charges, right? That's  
3 what you were saying?

4 Q. That's correct.

5 A. One charge was dismissed and overturned. The one then  
6 that is left is 2322(c), which states travel and foreign  
7 commerce and having sexual contact with somebody under the  
8 age of 18 once you arrive in that country.

9 Q. And you pled guilty to that?

10 A. Yes.

11 **MR. JAMES:** I'm finishing up, Your Honor, if I can have  
12 just one moment?

13 **THE COURT:** Take your time.

14 Q. You've stated in your deposition at page 105 that the  
15 sexual attraction that you had with males, with boys, is  
16 something that is not going to go away. It's going to be  
17 completely with you for the rest of your life. That's  
18 true, isn't it?

19 A. To some extent it's probably something that does not  
20 just go away.

21 **MR. JAMES:** I have no further questions, Your Honor.

22 **THE COURT:** How old were you when you first realized you  
23 were only attracted to young boys?

24 A. Probably at 16 - 17, something like that. I was  
25 attracted -- I guess maybe it was a little bit later than

1 that, probably at 18 or 19.

2 **THE COURT:** Before you went to college, or were you still  
3 in high school?

4 A. Right at the end of high school. Generally any sexual  
5 activity involved people closer to my own age, maybe a year  
6 younger.

7 **THE COURT:** But with males?

8 A. But with males, yes.

9 **THE COURT:** And there was sexual activity when you were 17  
10 or thereabouts with males?

11 A. Yes. Yes.

12 **THE COURT:** And now you're 75?

13 A. Yes, sir.

14 **THE COURT:** So for almost 60 years your entire life has  
15 been channeled into this behavior?

16 A. Yes, it has, Your Honor.

17 **THE COURT:** Okay. Do you have any questions.

18 **MR. TARLTON:** Yes, Your Honor, I do.

19 CROSS-EXAMINATION

20 **BY MR. TARLTON:**

21 Q. Mr. Schmidt, how long have you been incarcerated?

22 A. For this past incarceration?

23 Q. Yeah, in federal prison.

24 A. It's been, I think, 14 years.

25 Q. You've told us a little bit about a rationale you had

1 at the time that you were committing your crimes. Well,  
2 what do you mean by that, at the time?

3 A. Well, the rationale I always used was that I thought  
4 the victims were willing. Or I thought that I could be as  
5 a teacher or as a mentor to them and be of some benefit in  
6 their life. So I realize that rationale is wrong now, but  
7 still to me if the victim was willing I was also willing.

8 Q. What do you mean by wrong, specifically?

9 A. Well, what I mean by that is over the years I've  
10 realized and recognized the detrimental mental effects that  
11 someone could suffer as a result of -- of having sexual  
12 contact when they had not reached the age of 18. That it  
13 could be a suffering that it could cause damage.

14 Q. When did you start developing this realization?

15 A. Well, it's been over the years. Actually I felt it  
16 when I was released the first time from prison after doing  
17 the -- I think I did 10 years on the 18 year charge. I  
18 realized it when I got out, and I used that same rationale  
19 with the young boy that I did meet when I got out, the 12  
20 year old. And during that period of time I guess I knew it  
21 for I would say in about a year before I left for the  
22 Philippines, and I used that same rationale, as long as I  
23 didn't do anything sexually, everything was okay.

24 Q. Let's talk a little bit about your history while in  
25 federal prison. What kind of classes or work, jobs and

1 things like that have you done while in prison?

2 A. Well, I've got a lot of programming hours. I attended  
3 fiber optic school. I attended and got certificates in  
4 Microsoft computing, and I taught Microsoft office classes  
5 and GED teacher. There are many classes I've taken. I've  
6 spent the whole time -- I think I have close to 5,000 hours  
7 of programming.

8 Q. And what about infractions or accusations that you've  
9 broken the rules, anything like that?

10 A. I've never gotten any infractions since I've been  
11 incarcerated in any incarceration.

12 Q. Of any type?

13 A. None, no infractions at all.

14 Q. Have you seen inmates that have -- that are sex  
15 offenders breaking rules such as collecting images of  
16 minors or engaging in sex acts?

17 A. I've seen a lot of that, yes.

18 Q. Substance abuse, drugs, alcohol?

19 A. Well, in my time in the commitment unit I've seen a  
20 lot of collecting of pictures, a lot of sex between  
21 inmates, a lot of -- I've heard a lot of telephone calls  
22 and email problems. And before that I've seen a lot of  
23 drug use, a lot of alcohol use, yes.

24 Q. Why haven't you engaged in any of that?

25 A. Well, I never engaged -- I was never interested in

1 getting into any kind of activity like that at all. I only  
2 wanted to serve my time and do everything that I was  
3 supposed to do. I had no interest -- I'm not a drug user.  
4 I don't use alcohol. I'm not interested in pornography.  
5 That's all something I'm not interested in.

6 Q. Now, back in 2015 just before Maryland initially  
7 vacated your convictions were you working on any kind of  
8 release plan or even right after?

9 A. Recent?

10 Q. Since 2015.

11 A. Since 2016. What I'm trying to do, I have full Social  
12 Security benefits and I've been trying to stay in touch  
13 with the VA. I've already applied for old age benefits,  
14 which I'm eligible for, plus compensation for damages that  
15 I incurred while I was in the service, which should give me  
16 enough money to live on.

17 Q. Have you reviewed a letter from the probation office  
18 discussing the terms of your lifetime supervised release?

19 A. Yes.

20 Q. Do you understand what kind of conditions you would be  
21 under if you were ever released?

22 A. Yes.

23 Q. What's your understanding of those conditions?

24 A. Well, one is I remember seeing that I would have to  
25 wear an ankle bracelet and I would have to attend therapy,



1 which I would agree to. The other conditions, I think they  
2 said they would monitor me very closely. I'm not sure of  
3 everything that was on that. Of course I'm not to have any  
4 contact with anybody under the age of 18.

5 Q. Why should this Court to believe that you wouldn't  
6 just leave and go back to the Third World or developing  
7 world?

8 A. Well, at 75 years of age I can't find work to sustain  
9 me at all. Not only that but they have ordered that I no  
10 longer have a passport, so I wouldn't be able to leave the  
11 country. And there's no way I could find jobs overseas  
12 anywhere.

13 **THE COURT:** Are you taking any medicines?

14 A. I'm taking some medicine, yes.

15 **THE COURT:** What are they for?

16 A. I take a blood pressure medication. I take a baby  
17 aspirin every day and I take an aspirin, not aspirin, a  
18 medication called Tamsulosin for I think it's a prostate  
19 issue.

20 **THE COURT:** Does any of that affect your sexual drive?

21 A. Well -- yes. The -- well, those medications don't no.

22 **THE COURT:** They don't?

23 A. No. I've been diagnosed with an enlarged prostate and  
24 I've been on medical care for urinary problems, and I don't  
25 think any of that affects anything else.

1       **THE COURT:**   Okay.

2       Q.   How would you describe your sexual interests and  
3       fantasies, if any, at this point in your life?   Right now.

4       A.   I have no -- no interest -- no intent, no interest in  
5       anything like that at all.   I've never had really fantasies  
6       anyway.   My libido is probably close to zero.   I have no  
7       desire to engage in any inappropriate activities.

8       Q.   Have there been visible changes with your sexual  
9       desire over the last -- since you were 60 years old until  
10      today?

11      A.   Well, I know for the last probably 15 years my libido  
12      has been going down pretty steadily.   So in the last --  
13      since I've been incarcerated not only has my libido been  
14      going down but I think my prostate has caused some problems  
15      to where I'm not even able to get an erection or sustain an  
16      erection for any amount of time at all.

17      Q.   I know there were legal issues surrounding why you  
18      wouldn't seek out sex offender treatment in prison.   Did  
19      you ever have an interest in that.   I think the reports  
20      show that you declined wanting to participate in sex  
21      offender treatment while you were in federal prison.   Did  
22      you ever seek it out in any way at any time?

23      A.   Well, yes, I did.   When I first came into the system,  
24      in normal interviews I was asked if I wanted to  
25      participate.   And I think the only thing I was told about

1 was a program at Devens, and I said I wasn't interested at  
2 the time, that I wanted more information. And the doctor  
3 that interviewed me said, fine, she would pass on more  
4 information. Well, I didn't hear anything more at all, but  
5 when I got to Fort Dix in 2010 I did request to come to  
6 Butner, and I was denied by my caseworker or counselor at  
7 the time. So I did ask to come to Butner, but I didn't  
8 know anything about what the programs entailed or anything  
9 like that.

10 Q. And then finally if you are offered supervised  
11 lifetime -- or lifetime supervised release, what's your  
12 plan for what you're going to do for the rest of your  
13 years?

14 A. Well, my plan I guess will be to retire just like any  
15 other retired person would do. I want to have a quiet  
16 finish to my life. I'm interested in reading, having a  
17 garden and I did do work before for NIH, and it may be  
18 possible I could do some part-time work.

19 Q. What's NIH?

20 A. National Institute of Health. I did studies for them,  
21 and I enjoyed that. And that would be available even at my  
22 age. Like I said, I know I can't find work anywhere, but I  
23 could possibly do some part-time work.

24 Q. Thank you.

25 **MR. TARLTON:** No further questions, Your Honor.

1       **THE COURT:** Anything? Go ahead.

2                               REDIRECT EXAMINATION

3       **BY MR. JAMES:**

4       Q. We'll just pick up on the last statement so it's  
5 clear. When you said you did work at NIH, you're talking  
6 about volunteering for studies?

7       A. Right.

8       Q. You're not like a professor or doing any sort of  
9 scholarship type work?

10      A. No, I do studies with them. And you can do as many as  
11 you want.

12      Q. So you volunteer for studies?

13      A. Right.

14      Q. That's what you're talking about. When you say that  
15 your libido is down and you cannot get an erection, you  
16 realize the difference between sexual functioning, being  
17 able to get an erection and sexual desire, right?

18      A. Yes.

19      Q. And you realize that there are medications for, such  
20 as Cialis or Viagra for men who have a sexual desire and  
21 want to gain an erection. Is that correct?

22      A. I've heard of that, yes.

23      Q. You realize that?

24      A. Yes.

25      Q. So when you're saying in reference to questions by Mr.

1 Tarlton that you have no interest, your libido is zero,  
2 isn't it a fair statement that when you were released in  
3 July of 2000 if you were asked at that time you would have  
4 said the same thing you're saying right now, that you had  
5 no interest and low libido; is that correct?

6 A. It was low at that time, yeah.

7 Q. And that's what you would say?

8 A. Yeah.

9 Q. Nos, in fact, after that release, and we went through  
10 them and I won't belabor the Court again by going through  
11 all them, after your release from prison in July of 2000  
12 you went on to sexually molest boys in the Philippines and  
13 in Cambodia?

14 A. Yes.

15 Q. When Mr. Tarlton was going through with you the  
16 supervised lifetime provisions and conditions you made  
17 reference to an ankle monitor or ankle bracelet.

18 A. Yeah.

19 Q. Now, none of those conditions would stop you from  
20 talking to a boy, meeting a boy, meeting a boy's family,  
21 gaining that boy's confidence and then engaging in the  
22 sexual molestation acts of rubbing yourself against the boy  
23 or masturbating the boy. None of those conditions would  
24 have stopped that; is that correct?

25 A. None of that I have any interest in any longer. And I

1 didn't -- when I was released from prison in 2000 I knew  
2 that I could not commit another crime.

3 Q. But you did commit another crime?

4 A. But it was in another country. I went and you say  
5 eight months. I know I was with a boy for a year only to  
6 enjoy the company of the boy, not to engage in any sexual  
7 activity. The desire and the intent has been lowered  
8 considerably. Whether it's something that would stay with  
9 someone their entire life or not I guess the doctors would  
10 be best to answer that. I just know that my interest and  
11 intent are not to engage in any kind of sexual activity  
12 with anybody under the age of 18. And my lack of libido,  
13 my overall situation right now has convinced me -- I'm  
14 convinced that at my age now with the lack of libido that I  
15 have no intent or interest in performing any kind of  
16 illegal sexual act. I only want to finish my life quietly  
17 and retire as a normal person.

18 Q. When Mr. Tarlton went through with you questions  
19 relating to what you had seen other inmates do, as you  
20 pointed out in your examination you never engaged in  
21 collecting pictures of children; isn't that correct?

22 A. That's correct.

23 Q. You have all during the times you have been  
24 incarcerated, whether it was your 18 years state term, your  
25 current federal term or the smaller two year term in your

1 earlier incarceration history, you've never acted out as an  
2 inmate?

3 A. Never acted?

4 Q. You've never acted out as an inmate?

5 A. No.

6 Q. You've never presented any problems in any  
7 institution; is that correct?

8 A. That's correct.

9 Q. And despite that, when you were released, each time  
10 you've been released from imprisonment, you engage in acts  
11 of sexual molestation with boys. Isn't that correct?

12 A. Well, that's correct.

13 **MR. JAMES:** No further questions, Your Honor.

14 **THE COURT:** All right. Thank you. You can step down.

15 Do you have any other witnesses?

16 **MR. JAMES:** Yes, Your Honor. At this time we call Dr.  
17 Watkins. Mr. Renfer will be examining.

18 **DR. ROBIN WATKINS, GOVERNMENT'S WITNESS, SWORN**

19 DIRECT EXAMINATION

20 **BY MR. RENFER:**

21 Q. Good morning, ma'am.

22 A. Good morning.

23 Q. Where are you currently employed?

24 A. I am currently employed at the Metropolitan  
25 Correctional Center in Chicago, Illinois.

1 Q. And what are some of your duties and responsibilities?

2 A. I am a forensic psychologist there. I conduct court  
3 ordered psychological evaluations involving competency to  
4 stand trial, competency to represent oneself, competency to  
5 be sentenced, criminal responsibility and general  
6 mitigating factors, presentence reports. I also do  
7 supervision of students there. Crisis intervention.  
8 Manage two units in the prison setting in terms of their  
9 clinical needs.

10 Q. And at some point were you working at BOP at Butner?

11 A. Yes, I was.

12 Q. And at the time there what were your duties and  
13 responsibilities?

14 A. My title there was sex offender forensic psychologist.  
15 The duties were largely the same as what they are in  
16 Chicago, plus the addition of about 40 to 50 percent of my  
17 caseload was this type of evaluation for sexual  
18 dangerousness under the Adam Walsh Act.

19 Q. So I take it then that you have evaluated individuals  
20 in the past to determine whether they are sexually  
21 dangerous under the Adam Walsh Act?

22 A. I have.

23 Q. Approximately how many times?

24 A. Approximately 15 I would say, 15 to 18.

25 Q. As part of your duties and responsibilities did you



1 have an occasion to evaluate Richard Schmidt to determine  
2 whether he is sexually dangerous?

3 A. I did.

4 Q. Under the Adam Walsh Act?

5 A. I did.

6 Q. What are the three elements or criteria that you  
7 evaluate to determine whether someone is sexually  
8 dangerous?

9 A. Whether the individual has committed an act or  
10 attempted act of child molestation or sexual violence would  
11 be the first. Whether there is the presence of a serious  
12 mental illness, abnormality or disorder would be the  
13 second. And then the third would be as a result of that  
14 illness, abnormality or disorder would the individual have  
15 serious difficulty refraining from future child molestation  
16 or sexual violence.

17 Q. And after evaluating Mr. Schmidt did you reach an  
18 opinion as to those three criteria?

19 A. I did.

20 Q. And did you draft a report that reflects your  
21 opinions?

22 A. I did.

23 Q. Now in an effort to evaluate Mr. Schmidt did you try  
24 to interview him?

25 A. I did.

1 Q. And what was his response to your request for you to  
2 interview him?

3 A. He declined.

4 Q. Well, with regard to the first criteria, did you have  
5 an opinion as to whether he had committed acts of sexual  
6 violent conduct or child molestation?

7 A. Yes, I did.

8 Q. And what was that opinion?

9 A. Affirmative that he had committed such acts. He had  
10 been convicted for four contact sexual offenses and had  
11 been charged with a fifth as well. All the victims were  
12 males between the ages of eight and 13, which would qualify  
13 that as child molestation.

14 Q. With regard to the second criteria, whether Mr.  
15 Schmidt suffers from a serious mental illness or disorder,  
16 did you have an opinion about that?

17 A. Yes, I did.

18 Q. And what was that opinion?

19 A. Again, my opinion was in the affirmative. I diagnosed  
20 him, based on a record review, with pedophilic disorder,  
21 exclusive type, sexually attracted to males.

22 Q. Regarding the third criteria, did you reach an opinion  
23 as to whether he would have serious -- as a result of a  
24 serious mental disorder he would have serious difficulty in  
25 refraining from engaging in future acts of sexual violent

1 conduct or child molestation if released?

2 A. Yes, I did.

3 Q. And what was that opinion?

4 A. Again, that finding was also in the affirmative. My  
5 opinion was that because of the pedophilic disorder,  
6 exclusive type, he would have serious difficulty  
7 refraining.

8 Q. And as part of your evaluation did you consider any  
9 actuarial assessment?

10 A. Yes, I did.

11 Q. Specifically which one?

12 A. The Static-99R.

13 Q. And what was the score Mr. Schmidt received for the  
14 Static-99R?

15 A. At the time I scored it, I had limited information. I  
16 was the first one to evaluate him. He did not participate  
17 in an interview, so I was uncertain about one of the  
18 factors, so I scored it two ways just in an abundance of  
19 caution to account for the potential for that having to be  
20 scored either way depending on more information that would  
21 be obtained. That item involved whether he had ever lived  
22 with someone with whom he was in a significant  
23 relationship. Now I know that he has not, and the  
24 criterion is that that cohabitation occur for a period of  
25 at least two years. At the time I scored that as a zero or

1 one, so the Static total score would have been three or  
2 four.

3 Q. And based on all the information you received up to  
4 today's date, how would you score that Static-99R score?

5 A. So it would be the latter score of four.

6 Q. Four?

7 A. Yes.

8 Q. And what range does that put him in?

9 A. The quality descriptor would be the moderate to high  
10 range, based on that score.

11 Q. Could you describe to the Court exactly what the  
12 moderate to high range means in practical terms?

13 A. There's not a very defined explanation of what those  
14 qualitative descriptors mean. However, there are some  
15 numbers, some recidivism rates, over a five and ten year  
16 range that are more, I think, descriptive of where his  
17 score would have fit in. So comparing him to a routine  
18 sample, his five year recidivism rate would be 11, 11  
19 percent. Comparing him to a high risk high needs sample,  
20 his five year would be 17.3 percent and his ten year would  
21 be 27.3 percent.

22 Q. And as part of your opinion did you consider any  
23 empirically supported risk factors, other than those  
24 dynamic risk factors?

25 A. Yes, I did.

1 Q. And the first one regarding sexual preoccupation,  
2 what, if any, findings did you make with regard to Mr.  
3 Schmidt's sexual preoccupation?

4 A. I concluded that there was significant evidence of  
5 sexual preoccupation based on his longstanding repetitive  
6 nature of offending, his repeated encounters with young  
7 boys in various contexts, both prior to now I know from  
8 reviewing other records and other reports, prior to his  
9 detection for the offenses I knew about at the time. And  
10 also while under supervision and while on parole for the  
11 offenses that he had been convicted of.

12 Q. And how about the deviant sexual interest? Can you  
13 state whether or not you found that applied to Mr. Schmidt?

14 A. Yes, I did. That factor refers to sexual preference  
15 for prepubescent or pubescent children, typically defined  
16 as females age zero to 12 and males age zero to 13. His  
17 victim pool fell within that range. And there are other  
18 facets that could qualify as deviant sexual interests, but  
19 that's the one that I found applied to him. And that was  
20 clearly present just based on the evidence from his  
21 repeated victim type.

22 Q. And how about offense-supportive attitude?

23 A. At that time because he had not participated in the  
24 evaluation with me, I had not had the opportunity to  
25 interview him, I just indicated that the presence or

1 absence of that risk factor was unknown. However, in  
2 reviewing the reports I saw that there was further evidence  
3 to support the potential presence of that risk factor. In  
4 listening to Mr. Schmidt's testimony, I believe I saw even  
5 greater evidence of the presence of that risk factor.

6 Q. And that would apply to him?

7 A. Yes.

8 Q. And how about the emotional congruence with children?

9 A. Yes. Again, I think there was evidence of that at the  
10 time of my evaluation and even more conclusive evidence now  
11 that I have reviewed the reports of others who have  
12 interviewed him, specifically about that factor. I believe  
13 he either testified in his deposition or maybe reported to  
14 one of the evaluators that he did feel more comfortable  
15 with children emotionally. It sounds like his intent in  
16 many of his sexual relationships was not so much driven by  
17 sex but sort of an emotional relationship with the boys  
18 with whom he was spending time.

19 Q. And with regard to the dynamic risk factor lack of  
20 emotionally intimate relationships with adults, did you  
21 find that applied to Mr. Schmidt?

22 A. Yes, I did. I mean I just said there is no evidence  
23 of emotionally intimate adult relationships in the  
24 available information at the time that I conducted the  
25 evaluation. Again, having reviewed additional records and

1 his own statements, it's clear that that applies.

2 Q. How about lifestyle impulsiveness?

3 A. That factor was difficult for me to assess, again,  
4 because he did not participate in the interview. I still  
5 don't feel like I have a great sense of what his day to day  
6 functioning was. There are certainly indications that he  
7 was impulsive in leaving the country when he was alerted  
8 that there was potential for him to get a parole violation.  
9 But I don't know that there is clear evidence at this time  
10 for me to say that that's present.

11 Q. And how about the resistance to rules and supervision?

12 A. Yes, that factor was present. That was clearly  
13 inferred from the information that I was able to review in  
14 the records and his behavior over the various terms of  
15 supervision that he has had. He's had I don't believe any  
16 successful terms of supervision in which he has completely  
17 abided by the rules and not had a violation at some point.

18 Q. At actually at one point he actually fled the United  
19 States jurisdiction to avoid the repercussions of violating  
20 parole, correct?

21 A. Correct.

22 Q. Now with regard to -- as part of your opinion did you  
23 consider any what's called protective factors?

24 A. Yes, I did.

25 Q. And the first one, considering age, do you consider

1 Mr. Schmidt's age to be a protective factor in this case?

2 A. In this case I don't believe that that protective  
3 factor applies so much to Mr. Schmidt?

4 Q. Why not?

5 A. Typically you would expect to see someone's sexual  
6 offending behavior, the trajectory of that behavior to  
7 decrease with age, maybe starting in one's 40s. And  
8 actually that's around the time that Mr. Schmidt was first  
9 detected and received his first sexual offense. Now  
10 certainly he has since admitted to previous sexual offenses  
11 that dated much earlier than that, but it does appear there  
12 was several offending behaviors in a row in his 40s for  
13 which he was apprehended. Once somebody hits the age of  
14 60, you know typically that's sort of a benchmark of when  
15 you might apply this protective factor, but Mr. Schmidt has  
16 shown that he actually absconded from supervision to go to  
17 not one but two countries with sex trading problems, I  
18 guess I would say, and committed further sexual offenses in  
19 those countries at the age of 61, I believe. So in his  
20 case, you know, his offending has continued well beyond  
21 when one would expect to see that trajectory start to taper  
22 off with age.

23 Q. And other than possibly his self-serving statements  
24 made to experts, did you see any indication in the record,  
25 in any of the records or documents or his testimony here



1 today which led you to believe that his sex drive has  
2 actually decreased with his age?

3 A. I don't see anything objective. What I would say  
4 about that is even if he does have difficulty with getting  
5 an erection as he said, that is somewhat relevant but  
6 probably not entirely relevant because the nature of his  
7 offending behavior did not require an erection in the first  
8 place.

9 Q. Could you elaborate on that, please?

10 A. Yes. Most of his offenses involves touching,  
11 fondling, the tongue in the ear of one of the victims.  
12 There were some cases where he was alleged to have had an  
13 erection during the offending, but in the records I believe  
14 it indicated that he typically would masturbate afterwards  
15 to the memories of the offending. To commit the offenses  
16 himself in the moment he used his hands for the most part.

17 Q. And I believe he indicated at one point he kissed a  
18 boy's penis as well?

19 A. Correct.

20 Q. And how about the protective factor of time spent in  
21 the community without offending, did you find or determine  
22 whether that applies to Mr. Schmidt's particular case?

23 A. Yes, I did not find that that applied. In completing  
24 a time line of his offending and his time in and out of the  
25 community, it appeared that the little time he did have in

1 the community after he was first apprehended he violated  
2 his terms of supervision, obtained new victims, committed  
3 new offenses, so he did not have a significant period of  
4 time in the community without offending.

5 Q. And as part of your opinion did you consider the  
6 Bureau of Prisons guidelines for commitment of sexually  
7 dangerous individuals?

8 A. Yes, I did.

9 Q. And I guess one of those guidelines is a person  
10 repeating contact with victims. What, if any, opinion did  
11 you have as to whether that applied in Mr. Schmidt's  
12 particular case?

13 A. I found that that did apply. He had a total of ten  
14 known victims at the time that I did the record review and  
15 completed the evaluation. Now based on his admissions to  
16 other evaluators it seems that that number has gone up  
17 pretty significantly.

18 Q. There were victims from the time he was 18 until the  
19 time he was incarcerated?

20 A. Yes.

21 Q. And what about the denial or inability to appreciate  
22 the wrongfulness of his actions?

23 A. Yes. At the time there was little information in the  
24 records, you know, to indicate whether or not he did  
25 appreciate that. There is mixed evidence I believe in the

1 other experts' evaluations and in his deposition and his  
2 testimony today. He does state that sexual abuse can have  
3 a detrimental effect/impact on victims. I didn't hear him  
4 elaborate too much on what that means, so I can't say with  
5 certainty what his attitudes are regarding that. He  
6 certainly doesn't deny his offending in general. He seems  
7 to have acknowledged that he has committed numerous  
8 offenses. But in terms of his appreciation of the impact  
9 on the victims and the wrongfulness, I think that that's  
10 unclear to me at this time.

11 Q. And I believe you testified previously about the  
12 actuarial assessment, correct?

13 A. Yes, I did.

14 Q. And what about his inability to control conduct such  
15 as offending while on supervision?

16 A. Certainly he has shown that he has repeatedly offended  
17 while on supervision and violated the terms of parole and  
18 supervised release in order to do so.

19 Q. In fact, would it be a fair statement that every time  
20 he has had a case pending or that he has been on some type  
21 of parole or supervision, he has continued to reoffend even  
22 though he has had a case pending, he has been awaiting  
23 sentencing or his actions were being monitored? Would that  
24 be a fair statement?

25 A. Yes, I think it would.

1 Q. And what about the factor of, the BOP factor of  
2 completion of sex offender treatment? Did you find whether  
3 that would apply to Mr. Schmidt's particular case?

4 A. I found that he did not successfully complete  
5 treatment. He did participate in one program but was  
6 terminated from the program for inappropriate actions. He  
7 declined participation in sex offender treatment while in  
8 the BOP. He mentioned during his own testimony that he  
9 requested to go to Butner, and I believe he was saying that  
10 in the context of he was asking to go to a place where  
11 there was a treatment program. And I just want to clarify,  
12 having worked at Butner, there is no sex offender treatment  
13 program there for regular inmates serving a sentence.  
14 That's not a place that he could have received sex  
15 treatment even if his request had been approved. There is  
16 one treatment program there, but that is in the context of  
17 the commitment and treatment program for individuals who  
18 are civilly committed sex offenders or individuals who have  
19 pending cases like Mr. Schmidt.

20 Q. And with regard to the participation in the sex  
21 offender treatment that he was actually kicked out of,  
22 that's in reference to back in the '80s with the Johns  
23 Hopkins treatment, correct?

24 A. Correct.

25 Q. And you heard him testify about lifetime supervision,

1 correct?

2 A. Yes.

3 Q. Could you explain to the Court why -- or do you feel  
4 that lifetime supervision would work in Mr. Schmidt's  
5 particular case?

6 A. I do not believe that really there is any term of  
7 supervision that would be sufficient to ensure that Mr.  
8 Schmidt does not reoffend.

9 Q. Why is that?

10 A. Because he has had numerous terms of supervision  
11 placed on him in the past and has violated all of them. He  
12 ia correct that it would be much more difficult for him to  
13 flee the country now that he isn't allowed to have a  
14 passport. But he has also shown that his method of  
15 selecting victims and grooming them, so to speak and  
16 getting them to comply with offending can be done in a way  
17 that appears maybe innocent at the time. Like he was  
18 developing a relationship trying to help others he said,  
19 trying to support the families, gaining trust. That's a  
20 difficult thing to monitor through a term of supervision.  
21 Yes, he is ordered not to have contact with minors but he  
22 has been ordered to not have contact with minors several  
23 times in the past and has not abided by that.

24 Q. Other experts in the case, in this case, have actually  
25 found that age is a protective factor. Could you explain

1 to the Court why -- or do you agree with those experts that  
2 age is a protective factor in the case?

3 A. No, I do not believe in his case that that protective  
4 factor would apply.

5 Q. And I think a couple of the experts in this case have  
6 also found significance in the fact that Mr. Schmidt has  
7 been incident free in prison for the past 13 or so years.  
8 Do you find that to be a relevant factor in Mr. Schmidt's  
9 particular case?

10 A. Not so much in his case.

11 Q. Why not?

12 A. Because -- first of all he doesn't have access to his  
13 preferred victim pool. There are no boys between the ages  
14 of nine or ten and 18 in a federal prison setting. By  
15 definition they are not inmates there and there are no  
16 staff there of that age. So he doesn't have interpersonal  
17 access to that. Now the type of acting out that you would  
18 normally see in prison that might be indicative of trouble  
19 controlling one's sexual action is typically something  
20 along the lines of collecting images, even watching TV  
21 programs with children, cutting out magazine pictures of  
22 kids in swimsuits, things along those lines. But that  
23 tends to be observed in individuals who are more visually  
24 stimulated, and Mr. Schmidt in his case has stated that  
25 he's never had that interest. He's never been interested

1 in child pornography. His interest appears to be more  
2 rooted in the emotional connection with children, which  
3 then also involves numerous boundary violations and sexual  
4 offending against those victims. So it all seems  
5 intertwined together with the emotional component of it,  
6 which is much more difficult to tease out and reverse I  
7 think in the future when his entire interpersonal style of  
8 interacting has centered around that type of relationship  
9 with young children where he could be a mentor or teacher.

10 **MR. RENFER:** No further questions, Your Honor.

11 **THE COURT:** Do you have anything you want to ask her?

12 **MR. TARLTON:** Just briefly, Your Honor.

13 CROSS-EXAMINATION

14 **BY MR. TARLTON:**

15 Q. Dr. Watkins, when you sought to interview Richard  
16 Schmidt that was several months or a month or so after his  
17 convictions had been thrown out but before he had been  
18 certified for commitment, correct?

19 A. That's correct.

20 Q. They never asked you to interview him after April of  
21 2016 after they certified him in court?

22 A. I'm sorry, can you repeat that?

23 Q. You were never asked to interview Mr. Schmidt after he  
24 was certified in court?

25 A. No. No, I was not asked to repeat the evaluation or

1 interview him.

2 **MR. TARLTON:** No further questions.

3 **THE COURT:** All right. Thank you. You can step down.

4 A. Thank you.

5 **MR. JAMES:** At this time the United States calls Dr. Gary  
6 Zinik.

7 **THE COURT:** Who?

8 **MR. JAMES:** Dr. Gary Zinik.

9 **DR. GARY ZINIK, GOVERNMENT'S WITNESS, SWORN**

10 DIRECT EXAMINATION

11 **BY MR. JAMES:**

12 A. Good morning, Your Honor.

13 **THE COURT:** Good morning. What's your name?

14 A. Zinik, Gary Zinik.

15 **THE COURT:** Z-I --

16 A. Z-I-N-I-K.

17 Q. All right. Dr. Zinik, you've testified in a number of  
18 4248 matters; isn't that correct?

19 A. Yes.

20 Q. In fact, you've testified before Judge Boyle in the  
21 past; isn't that correct?

22 A. Yes.

23 Q. I believe in the Caporale case?

24 A. And others, yes.

25 Q. All right. You have testified before as an expert



1 witness in all these cases?

2 A. Yes.

3 Q. You have been in this field as a forensic  
4 psychologist, an expert forensic psychologist in the area  
5 of sexual predator evaluations, not only in federal courts  
6 but state courts, California and elsewhere; is that  
7 correct?

8 A. Yes.

9 Q. How long have you been doing this; how many years now?

10 A. About 35 years.

11 Q. Now with regard to the Richard Schmidt case, you found  
12 prong one of the Adam Walsh Act; is that correct?

13 A. Yes.

14 Q. And, for the record, that is in your report pages 2 to  
15 8 or Bates 1684 to 1690, which is Exhibit Number 7 in your  
16 notebook. Isn't that correct?

17 A. Yes.

18 Q. All right. And that's based on his convictions and  
19 his admissions and the undetected offenses; isn't that also  
20 correct?

21 A. Yes.

22 Q. And with regard to prong 2, you found that Mr. Schmidt  
23 does suffer from a serious mental illness, abnormality or  
24 disorder; is that correct?

25 A. Yes.

1 Q. And that's in fact pedophilic disorder?

2 A. Yes.

3 Q. Sexually attracted to males?

4 A. Yes.

5 Q. Exclusive type?

6 A. Correct.

7 Q. All right. You have a specifier exclusive type.  
8 First of all, what does that mean?

9 A. That means that Mr. Schmidt has never had sexual  
10 attractions or arousal to adult partners. I think we've  
11 heard him testify this morning that he's never had any sex  
12 with either adult men or women, that his entire sexual  
13 fantasy life and all of his sexual partners were children  
14 between the ages of approximately eight to maybe 14 or 15.  
15 Even those at the older range of that victim pool, he has  
16 described them as being younger looking. You know, the  
17 children that he molested over in Southeast Asia may have  
18 been 14 or 15, but they looked younger. He described how  
19 they were 12 or 13. And he has also been really clear  
20 about explaining that he -- his sexual fixation is on the  
21 young looks, the smooth skin, the hairless bodies the  
22 childlike qualities of the physique of children.

23 **THE COURT:** And this deviant course occurred as his  
24 sexuality was manifesting itself? He said around 16 or 17?

25 A. Exactly, Your Honor.

1 **THE COURT:** What would cause that? Is it just an  
2 aberration in human behavior?

3 A. He began sexual activity with boys his own age when he  
4 was approximately 12 years old.

5 **THE COURT:** But he told me he was not the victim of sexual  
6 predation.

7 A. Correct.

8 **THE COURT:** So what would cause that?

9 A. I think he just got stuck developmentally.

10 **THE COURT:** It's a deviation from norm.

11 A. Absolutely, Your Honor.

12 **THE COURT:** That's why it's a paraphilia.

13 A. Absolutely. It's a severe mental disorder under the  
14 statute. It's the exclusive pedophilia, which is more  
15 dangerous in the sense that it is -- it begins earlier, a  
16 younger age. Exclusive male object pedophiles have more  
17 victims than other sex offenders. They recidivate more  
18 quickly, and they continue to sexually offend into older  
19 ages than all of the other types of child molesters.

20 **THE COURT:** It's a minority paraphilia, isn't it?

21 A. It is. It's a very small subgroup, yes.

22 **THE COURT:** It's a subset of the general deviant behavior  
23 involving children.

24 A. Well put. Yes, Your Honor. And in my opinion the  
25 most dangerous and high risk subset.

1 **BY MR. JAMES:**

2 Q. And with regard to the -- and you found -- that's  
3 Prong 2 of your report --

4 A. Yes.

5 Q. -- in your findings; is that correct?

6 A. Yes.

7 Q. Let's go to the fact that -- are you aware that Mr.  
8 Schmidt during his second offense for which he was  
9 convicted, he was ordered to take -- or had Depo-Provera  
10 injections.

11 A. Right.

12 Q. And that was meant to lower his testosterone, right?

13 A. Right.

14 Q. And in fact during the time that he was getting those  
15 injections he had engaged in acts of sexual molestation  
16 with children; is that correct?

17 A. Yes, he did.

18 Q. All right. Let's go to another prong, prong 3,  
19 difficulty refraining prong.

20 A. Okay.

21 Q. You have found that he would meet criteria for the  
22 third prong; is that right?

23 A. Yes.

24 Q. And that is beginning at page Bates 1698 of your  
25 report or Bates --

1     **THE COURT:** It would appear to me that some of the  
2     retardant factors now given his situation, his age of 75  
3     years old, prostate activity, lack of any collateral sexual  
4     interest, pornography, things like that, and his physical  
5     structural problems with sexual outlet, why given those  
6     sort of objective factors is he still a risk?

7     A.    Okay, Your Honor.

8     **THE COURT:** Is that a fair question?

9     A.    Very good question. I believe he is still a risk. I  
10    think his advanced age does not override all of the other  
11    risk factors in his profile. He's very physically fit,  
12    Your Honor. He's quite healthy. He exercises. He walks  
13    an hour and a half every day. He does calisthenics  
14    exercises in his cell. He can do ten pull-ups on a chin-up  
15    bar. That's pretty physically fit for a 75 year old man.  
16    He doesn't have any medical conditions, any kind of life-  
17    threatening or disabling medical conditions. He takes meds  
18    for high blood pressure and prostate problems, but he could  
19    live another 15 years, 20 years. Who knows. I think it  
20    has been pointed out that even though he claims that he no  
21    longer has erections and his libido is low, he was saying  
22    that back in 2000 when he was released.

23    **THE COURT:** Yes, but I find a great distinction between him  
24    in 2000 and now it's 2018.

25    A.    Yes.

1 **THE COURT:** I think that the last expert tried to blend  
2 those together, but I think they are sharply distinct. How  
3 he was at 60 and how he is at 75 really don't overlap.

4 A. Okay. Fair enough. The bottom line for me, Your  
5 Honor, he is what we call emotionally identified with  
6 children.

7 **THE COURT:** No question about it. Even though he may not  
8 have the physical climax or consummation of it, he -- you  
9 think he is still a risk to play with children and sexually  
10 contact them?

11 A. Yes. Because he has only ever been able to get his  
12 emotional needs satisfied by children. He feels like a  
13 child himself. He feels more comfortable with children  
14 than adults. He gravitates toward children whenever he has  
15 the opportunity.

16 **THE COURT:** His emotional or interpersonal development  
17 ended when he was a teenager.

18 A. That's exactly how I see it, Your Honor. I think his  
19 sexual -- psychosexual and emotional development got stuck.  
20 It got arrested when he was a teenager, and he's never  
21 grown up psychologically or emotionally himself. And his  
22 choice of sexual objects never grew up. They were always  
23 children.

24 **THE COURT:** Does that manifest itself in his willingness to  
25 obey rules like never offend. He's subservient and willing

1 to stay in a structured environment?

2 A. Perhaps. He has always been very well-behaved. He  
3 has never been antisocial. He doesn't abuse alcohol or  
4 drugs. He has always been able to follow all the other  
5 rules except staying away from children.

6 **THE COURT:** And going to foreign countries where that  
7 exploitation exists is a bad sign, isn't it?

8 A. Very bad, Your Honor. I thought it was significant  
9 that this morning he said when he got out of prison in 2000  
10 he didn't plan on molesting any more children in the United  
11 States, but once he got to Southeast Asia it was a field  
12 day. And he felt that there was free rein to do what he  
13 wanted. And so he -- he went on a course of -- his sexual  
14 offending was almost had like a frenetic quality. When he  
15 was in the Philippines he had multiple victims. He got  
16 arrested for sexually molesting in the Philippines. Went  
17 to Cambodia, started doing it again. The police came and  
18 locked his door. He went and found a hotel and continued  
19 doing it after that. He really could not stop himself.

20 **THE COURT:** Okay.

21 **BY MR. JAMES:**

22 Q. With regard to the protective factors, successful  
23 completion of sex offender treatment is a known as a  
24 protective factor; is that correct?

25 A. Yes.

1 Q. And that's absent in this case?

2 A. Yes.

3 Q. All right. In fact, isn't it true that failure at sex  
4 offender treatment research has shown it makes one more at  
5 risk than a sex offender who never had sex offender  
6 treatment?

7 A. That's correct, yes. There's some research that shows  
8 that if you fail and get kicked out of sex offender  
9 treatment, which is what happened to him in the 1980s, the  
10 last time he had treatment at Johns Hopkins University,  
11 that you are actually more likely to reoffend than those  
12 offenders who were never even in treatment.

13 **THE COURT:** Treatment I'm assuming in the '80s was  
14 antediluvian compared to what it is now. I mean, what  
15 science knows about the problem now is light years more  
16 than it did then.

17 A. Good point, Your Honor. However, in his case he was  
18 going to one of the best treatment programs in the country  
19 at Johns Hopkins University. He was also getting Depo-  
20 Provera at that time. That was a very forward thinking  
21 newly --

22 **THE COURT:** Experimental.

23 A. Experimental treatment. Normally that works really  
24 well because it knocks out your testosterone. It knocks  
25 out your libido.



1       **THE COURT:** Well testosterone is not his problem.

2       A. Exactly. And he committed sex offenses while he was  
3       under the influence of Depo-Provera.

4       **THE COURT:** Yes. I'll recognize you as an expert. What's  
5       your educational background?

6       A. I have my Bachelor's degree from Stanford University  
7       in Psychology. My Master's degree from Harvard University  
8       and my Ph.D. from University of California at Santa  
9       Barbara. I'm licensed in California as a forensic  
10      psychologist.

11      **THE COURT:** And you testified in two or three of my prior  
12      cases?

13      A. I have, Your Honor, yes.

14      **THE COURT:** Okay.

15      **BY MR. JAMES:**

16      Q. Now, regarding his emotional congruence with children,  
17      that's a factor, a dynamic risk factor --

18      A. Yes.

19      Q. -- with regard to Mr. Schmidt; is that correct?

20      A. Yes.

21      Q. In fact, other than the times that he had been  
22      incarcerated, Mr. Schmidt had never ceased or desisted from  
23      engaging in acts of child molestation, based on the record;  
24      isn't that correct?

25      A. Yes.

1 Q. You testified he is a healthy man for his age?

2 A. Yes.

3 Q. He has no medical conditions --

4 A. Correct.

5 Q. -- that would stop him from engaging in the type of  
6 molestation that he has even admitted, the sort of  
7 fondling, the hands?

8 A. Yes. He said -- this is important -- that giving  
9 children pleasure gives him pleasure. He doesn't even  
10 necessarily need a direct stimulation to his own genitals  
11 so to speak. But by pleasing them, by arousing them, by  
12 bringing them to climax, that kind of pleasure brings him  
13 pleasure.

14 Q. What about sexual coping?

15 A. I think that he clearly exhibits this -- this is a  
16 dynamic risk factor that when the going gets rough he goes  
17 back to boys. And he has had some sort of clusters of  
18 sexual offenses where he will reoffend even while he is  
19 awaiting court, you know, resolution of a prior case. He  
20 reoffends when he is on probation. He is really quite  
21 compulsive in doing so. So, yes, I think he definitely has  
22 evidence of that risk factor.

23 **THE COURT:** And the compulsiveness you consider to be the  
24 factor that deals with whether he has serious difficulty?

25 A. Yes, Your Honor.

1       **THE COURT:** Compulsiveness trumps serious difficulty?

2       A.    I believe so, Your Honor. He may have gone for some  
3       periods of time without offending. He didn't do so while  
4       he was in the military. But he always went back to it. He  
5       was always on the lookout for new victims, and he was  
6       never able to completely stop. And I think if he had  
7       access to an attractive 12 year old boy that somehow came  
8       into his orbit, he would have serious difficulty -- you  
9       know, befriending that boy, having physical contact with  
10      that boy, and then eventually molesting that boy.

11      Q.    You would agree that his pattern of offending  
12      indicates that he befriends boys, often from fatherless  
13      homes, mothers who are in economic need and he provides  
14      those needs.

15      **THE COURT:** He grooms people.

16      Q.    He grooms. He grooms children?

17      A.    He grooms children, and he's good at identifying  
18      vulnerable children who are needy, as Mr. James said, as  
19      well as street hustlers, you know, male pros-- child  
20      prostitutes. He's good at finding those victims.

21      **MR. JAMES:** I'm almost finished, Your Honor, a few more  
22      questions.

23      Q.    Mr. Schmidt had not engaged in any sort of sex  
24      offender treatment since 1986; isn't that correct?

25      A.    Yes.

1 Q. And just to conclude, Your Honor.

2 In your report you detail actuarial measures that you  
3 examined and you also detail dynamic risk factors. Those  
4 are listed in your report. Is that correct?

5 A. Yes.

6 Q. And those deal with BOP guidelines?

7 A. Yes.

8 Q. And during your interview with Mr. Schmidt, he told  
9 you -- this is on page 21, the last page of your report.  
10 This is in reference to successful completion of a sex  
11 offender treatment program. He acknowledged to you,  
12 "Pedophilia is twisted through my whole life."

13 A. That's correct.

14 Q. So he said his entire life, entire being had been  
15 twisted with pedophilia?

16 A. That's right.

17 Q. That's driven his actions?

18 A. Yes.

19 Q. His molestations?

20 A. Yes.

21 Q. His violations of supervised release?

22 A. Yes. And if I could just quickly add, he said that  
23 because what he meant was, you know, after his second  
24 arrest he lost everything: lost his job, lost the store he  
25 was managing, lost his home, lost all his friends. And he

1 said, all I had left was my pedophilia. It was so twisted  
2 throughout my life that this was all I had left. Therefore  
3 I submitted to it. So when he gets in trouble for  
4 molesting children, instead of backing off and controlling  
5 himself --

6 **THE COURT:** He becomes passive.

7 A. Well, he embraces it even more because it's the only  
8 thing that gives him any meaning in life.

9 Q. Why do you believe lifetime supervised release would  
10 be insufficient to protect the community?

11 A. I think for all of the things we've already said here,  
12 you know, the fact that he's got this emotional congruence  
13 with children. He has no other way of finding, you know,  
14 of making contact with others. He's never been able to  
15 relate to adults. He feels like a child himself. He's  
16 always been more comfortable with children.

17 **THE COURT:** Does he have a difficulty, a challenge that in  
18 rejecting his behavior he's rejecting his very essence?

19 A. I think that's a good way to put it, Your Honor, yes.  
20 This is like the core of who he is, and if he doesn't have  
21 that it's like he doesn't exist.

22 **THE COURT:** Do you think therapy will help him on that?

23 A. I -- I -- it's hard to know whether, you know, at his  
24 age and because this is so deeply imprinted in him that --  
25 it will never cure him of his sexual interest in boys.

**THE COURT:** I mean, one of the problems with a 75 year old who has been in prison for 15 years is that it's existential. It's like no exit. I mean if you sentence him under Adam Walsh and he can only get out by successfully completing the treatment and it's inevitable that he never will complete the treatment, you're giving the person a doomsday sentence.

A. Well, I'm not sure I entirely agree with that, Your Honor. I think if he had a -- a significant, lasting relationship with a therapist, that would give him the experience of being able to connect with another adult emotionally. And I also think he needs to -- it would -- I'd be more comfortable seeing him released after he had some treatment and understood relapse prevention and developed a relapse prevention plan so that he identified what his risk factors are and had real concrete strategies in place to help him avoid relapsing.

**THE COURT:** But he hasn't come to grips with that yet?

A. Never had that kind of treatment yet. And that's more recent, more modern treatment, like you were saying, than what was available in the '80s.

**THE COURT:** Okay. Thank you.

**MR. JAMES:** No further questions, Your Honor.

**THE COURT:** Do you have any questions?

**MR. TARLTON:** Just briefly, Your Honor.

CROSS-EXAMINATION

**BY MR. TARLTON:**

Q. In your report you noted that the studies say that '60s are rare for recidivating, that anything over age 70 is even rarer?

A. Correct.

Q. And then also you've rejected his advanced age at 75 as a protective factor because of your assessment of his biological status?

A. I think -- I think he is very healthy and physically fit for a 75 year old man. So I think his age alone is not -- does not carry enough weight to protect him and keep him safe at this point. It doesn't override all of the other risk factors in this case.

Q. Okay. Thank you.

A. Uh-huh.

**THE COURT:** I'm usually a skeptic/critic of the Static-99 just because I've heard a lot of it. He has, I thought I heard, three or four, his score?

A. Four.

**THE COURT:** Four?

A. Yes.

**THE COURT:** In the world of Static-99s that's not a high score, is it?

A. It's not a particularly high score. It's -- I

1 wouldn't say it's -- it's certainly not a low score. It's  
2 an above average score. And he also got a three point  
3 reduction because of his advanced age.

4 **THE COURT:** That's what I was thinking.

5 A. And he's still relatively high, comparatively. So,  
6 you know --

7 **THE COURT:** I mean some of the people I see have 8's and  
8 9's, and it's like, okay, why are we here?

9 A. And, you know, before age 60 he was -- honestly, I  
10 would have to go back and recalculate it, but he was higher  
11 and now he's lower because he's older.

12 **THE COURT:** Only because of the age.

13 A. Only because he's older, right.

14 **THE COURT:** Thank you for being here.

15 A. Thank you, Your Honor.

16 **THE COURT:** We'll take a brief recess and you can be ready  
17 with your next witness if you have any. If not, we'll got  
18 to the defendant.

19 **MR. JAMES:** Yes, Your Honor, we would have to go to the  
20 defendant.

21 **THE COURT:** You have a witness that's not here today.

22 **MR. JAMES:** That's correct.

23 **THE COURT:** We'll come back and hear from the Respondent.

24 (Court recess 11:55 a.m. - 12:10 p.m.)

25 **THE COURT:** Do you want to call your first witness?



1 **MR. TARLTON:** Yes, Your Honor. We would call Dr. Fabian  
2 Saleh.

3 **DR. FABIAN SALEH, RESPONDENT'S WITNESS, SWORN**

4 DIRECT EXAMINATION

5 **BY MR. TARLTON:**

6 Q. Good afternoon, Dr. Saleh. Have you testified in  
7 front of this Court before?

8 A. I don't remember.

9 Q. Okay. What about in federal court?

10 A. Yes, I have.

11 Q. And you're an M.D., not a Ph.D; is that correct?

12 A. I'm an M.D., yes medical doctor.

13 Q. You're a psychiatrist?

14 A. Forensic psychiatrist, yes.

15 Q. Do you have any kind of treatment practice as well?

16 A. I didn't hear.

17 Q. You have a treatment practice?

18 A. Yes. I'm, as I pointed out, a forensic psychiatrist  
19 and a child and adolescent psychiatrist and a general  
20 psychiatrist. So I see patients both in my private  
21 practice and also at Beth Israel Deaconess Medical Center I  
22 see patients. And I run the Sexual Violence Prevention and  
23 Risk Management Program also at Beth Israel Deaconess  
24 Medical Center in Massachusetts, Boston, Massachusetts.

25 Q. Will you also tell the Court just a little bit about

1 your teaching, where you teach?

2 A. So I'm Assistant Clinical Professor with Harvard  
3 Medical School. I have been with the Harvard Program since  
4 2008, and prior to that I was with UMASS Medical School in  
5 Massachusetts. And this is following my training. I  
6 trained in Italy where I did my medical school in Florence  
7 and then did my internship at Case Western Reserve  
8 University in Cleveland, Ohio. My training in psychiatry  
9 at Johns Hopkins Hospital at the National Institute For the  
10 Study, Prevention and Treatment of Sexual Trauma. I worked  
11 there as well and then did my forensic fellowship in  
12 forensic psychiatry at UMASS Medical School and then stayed  
13 on with UMASS Medical School for several years but then  
14 joined the Harvard Program and have been with them ever  
15 since.

16 Q. Have you testified for state or federal prosecutors or  
17 governments seeking to commit people before?

18 A. Yes, I have.

19 Q. I believe you said you have testified about on 240  
20 occasions. How many times have you been asked to evaluate  
21 cases?

22 A. I have been retained as an expert in probably over my  
23 best guess would be at least 1,500 times if not 2,000 times  
24 but ended up testifying in 220 -- on 220 occasions.

25 Q. Okay. Is it fair to say your opinion is not always

1 helpful to the party that retained you?

2 A. Actually most of the time it has not been helpful to  
3 the party who retained me on a given case, yes.

4 Q. Let's talk about this case. To a reasonable degree of  
5 professional certainty, do you have any opinions about  
6 whether Richard Schmidt meets the criteria for commitment  
7 under the Adam Walsh Act?

8 A. Well, based on the totality of the information before  
9 me, including Mr. Schmidt's own testimony today and the  
10 testimony of the other two experts, I don't think that I  
11 have -- that the data don't support his commitment as a SDP  
12 at this given point in time. There are certainly serious  
13 concerns raised, and I would agree with it. I agree with  
14 his history, which is troublesome to say the least, but at  
15 this point in time I don't think he meets the strict  
16 language of a sexually dangerous person as defined by  
17 statute.

18 Q. Is that on the volitional impairment element or prong  
19 of the statute?

20 A. The problem with this case is that in my opinion one  
21 can't look at the case in a vacuum. And the vacuum would  
22 be if I were just to stop the assessment in 2000 and say,  
23 well, that's all what we have to consider. And that's not  
24 the case. I mean the case is, yes, he is a repeat  
25 offender. He repeated or engaged in sexual offending

1 behaviors while on parole, left the U.S., went to the  
2 Philippines, went to Cambodia, offended and then was  
3 arrested, came back and then was sentenced. If I had to  
4 consider all the information up to 2000 I would say, yes,  
5 he meets commitment criteria. But I can't disregard the 17  
6 years of time or 15 plus years of time that follow his most  
7 recent arrest. Because what one has to consider is that he  
8 has aged during the course of the last 15 years. That is  
9 something that one can't disregard. And so given that I  
10 can't look into this case -- or at this case in a vacuum, I  
11 have to consider these last 17 years, and there is just no  
12 data before me to support today that he meets commitment  
13 criteria as a sexually dangerous person. All the history I  
14 agree with. I mean, it's a problem history. I disagree  
15 with the diagnosis, the subtype diagnosis of pedophilia  
16 exclusive type. He is somebody who presents with  
17 pedophilic disorder nonexclusive type. But that aside,  
18 given the information before me, in my opinion he does not  
19 meet commitment criteria as a sexually dangerous person at  
20 this given point in time.

21 **THE COURT:** Does he suffer from antisocial personality  
22 disorder?

23 A. No. There is no evidence in support of a disorder.

24 **THE COURT:** And why do you believe that his pedophilia is  
25 not exclusive?

1 A. So the diagnostic criteria as described in the DSM-5,  
2 the Diagnostic and Statistical Manual, the fifth edition,  
3 makes a distinction between the exclusive type and the  
4 nonexclusive type, and it is based on sexual interest,  
5 arousal to anything other than prepubescent children. With  
6 regard to Mr. Schmidt he has certainly offended against  
7 children but children using the term are not all  
8 prepubescent. He has had interest in pubescent children  
9 but his report has interest in postpubescent children, and  
10 that would make his pedophilic disorder nonexclusive type  
11 of pedophilic disorder. So he is not just interested in a  
12 prepubescent boy, but is interested in the pubescent and  
13 postpubescent age group as well.

14 **THE COURT:** So the postpubescent age group is between, say  
15 13 and 16?

16 A. Thirteen (13) to 16. Depends on the -- ultimately on  
17 the developmental level of the child because sometimes boys  
18 mature at a later time so they may be still prepubescent at  
19 the age of 14 and vice versa where a child may be 13 years  
20 of age yet has already entered puberty.

21 **THE COURT:** What is the common name for that age group?

22 A. What has been used was hebephilia. At the age of --

23 **THE COURT:** Hebephilia, yes. So you think that  
24 distinguishes him because of the hebephilia from being  
25 exclusive?

1 A. Just turning to the language of the DSM, yes. That's  
2 where the difference is, and in my report I gave him a  
3 diagnosis of both the pedophilic disorder, nonexclusive  
4 type and what the DSM-5 calls the other specified  
5 pedophilic disorder, and within that group I would consider  
6 the interest that he had shown to the pubescent and  
7 postpubescent age group.

8 **THE COURT:** But he has no interest in adults or in  
9 heterosexual behavior?

10 A. Absolutely correct, yes.

11 **BY MR. TARLTON:**

12 Q. The diagnosis that you reached, do you have any  
13 opinion about the diagnosis as it impacts on volitional  
14 control issues?

15 A. I'm not sure I fully understand the question.

16 Q. You said that he doesn't have an active and  
17 symptomatic paraphilia right now at 75 years old. What do  
18 you mean by that?

19 A. What I mean by that is -- I think the best way to  
20 answer this question is to compare his presentation today  
21 to how he presented in the '80s, '90s or at the time when  
22 he left the U.S.. During those times he had the pedophilic  
23 disorder. He was symptomatic, so he had active symptoms of  
24 that disorder. And the result of that disorder he would  
25 act out despite the fact that he was supposed to follow

1 through and answer to the parole, for example, not  
2 withstanding that he ended up acting out sexually. That's  
3 how he presented back then. But at the present time there  
4 is no evidence to suggest that he has this active  
5 pedophilic disorder presentation as he did 15 plus years  
6 ago.

7 Q. Okay. You listened to Dr. Zinik's testimony about  
8 emotional congruence with children and how that impacts  
9 risks. What's your assessment of that?

10 A. I agree with Dr. Zinik in part because there is  
11 certainly something to be said that Mr. Schmidt was drawn  
12 to children. And as the term was used, groomed children to  
13 get close to them and at times it wouldn't serve just the  
14 purpose of him having subsequently sexual contact with  
15 them. But, again, what I think one has to do as well is  
16 when it comes to understanding the emotional congruity that  
17 he had for children I have to ultimately look at how he  
18 presented over the last 15 years where he has had no  
19 contact with children and you have to also then look at his  
20 psychological presentation over the course of the last 15  
21 years. If his essence is solely based on him being close  
22 to children, he wasn't close to children for the last 15  
23 years so one would have to conclude that he was not whole  
24 as a person and you would see some byproduct as a result of  
25 this absence access to children over the last 15 years.

1 And there is nothing that I could read in the records that  
2 he was in any sort of emotional distress, depressed, sad or  
3 not able to function because he didn't have access to  
4 children over the last 15 years. So that therefore I would  
5 not give it as much weight as Dr. Zinik did to the notion  
6 that his offending behaviors are solely drawn or driven by  
7 him wishing to be close to children. He wasn't close to  
8 children for the last 15 years and functioned well in the  
9 environment in which he found himself to be in.

10 **THE COURT:** He has never undergone treatment?

11 A. I would think -- agree with this in part.

12 **THE COURT:** Well, very early he had treatment in Johns  
13 Hopkins.

14 A. Yes.

15 **THE COURT:** Okay. Other than that he hasn't been engaged  
16 in treatment in 30 years?

17 A. That's correct, yes.

18 **THE COURT:** And what's the likelihood, in your opinion,  
19 that this condition would resolve itself or stop being  
20 active in the absence of any treatment?

21 A. I don't think he is going -- even if he were to be  
22 offered treatment I'm not sure that he would benefit from  
23 treatment because he has not -- I mean the issue of age  
24 again comes into play. He is 75 years old and he is who he  
25 is. I mean that's essentially what I think about Mr.



1 Schmidt. And so, yeah, I don't think that treatment per se  
2 would be any beneficial in terms of changing who he is in  
3 terms of changing his psychology.

4 **THE COURT:** Well, does that conclusion cause you to believe  
5 that he won't have serious difficulty or if you acknowledge  
6 that he would have serious difficulty and treatment is  
7 inoperative, then he's just left with no recourse.

8 A. I think he needs supervision and monitoring. And as  
9 far as I understand his case he will be supervised and  
10 monitored if he were to be released from the BOP. That is  
11 what is going to, in my opinion, to at least keep him in  
12 control and the community safe. But it's not that through  
13 treatment that he would change his way of thinking with  
14 regard to himself and then as a result be safe in the  
15 community. Supervision I think in his case is going to be  
16 important, and I understand that he is going to be on  
17 supervision for the rest of his life if he were to be  
18 released from the BOP.

19 **THE COURT:** Okay.

20 **BY MR. TARLTON:**

21 Q. Dr. Saleh, given Richard Schmidt's diagnosis, the  
22 specifics of it, if he lacked volitional control today,  
23 serious difficulty with volitional control today, if he had  
24 that, what would you expect to see in his prison behavior?

25 A. You would expect to see something in those 15 years,

1 so it wouldn't go unnoticed if he truly had difficulty  
2 controlling sexual impulse or desire for sexual activity  
3 with children and I would then use the -- I mean both  
4 prepubescent and pubescent and postpubescent children you  
5 would expect to see something. I understand he has had no  
6 access to children. There are no children in the BOP. And  
7 so you would expect him to engage in some behaviors to  
8 satisfy this void that he would have, and he has not. And  
9 then again going back to the issue of the emotional  
10 closeness that he has for children and, again, based on the  
11 data before us he has not had any contact with children so  
12 one would have to conclude if one were to accept the  
13 hypotheses of the who he is in terms of his essence that  
14 that void would cause some sort of psychological stress in  
15 him so you would see depression, anxiety, inability, say,  
16 to sleep because he is not close to children. And I have  
17 not seen anything in the records that would suggest that.

18 Q. What about fantasy stories or drawing images?

19 A. I mean, again, this is what I typically see in cases  
20 of people with pedophilic disorder, specifically if I'm  
21 going to accept Dr. Zinik's opinion about that he has the  
22 exclusive type of pedophilic disorder that they would  
23 substitute the presence of a child via drawings, for  
24 example, or associating with inmates who looked very young,  
25 engage in sexual activity with inmates who looked

1 childlike, for example. And, again, there is nothing here  
2 with regard to Mr. Schmidt.

3 Q. What about hearing Mr. Schmidt -- you heard his  
4 testimony. Do you think he has shown any level of insight  
5 into his criminal behavior in the past?

6 A. I certainly have to say that he is -- this is what I  
7 would say about this: that he is a well-spoken individual,  
8 intelligent individual and so one could certainly say,  
9 well, he tells you only what he thinks you want to hear to  
10 be able for him to come into court and testify that he has  
11 gained insight. But -- so that's a possibility certainly  
12 that I wouldn't dismiss. But that being said, because he  
13 is an intelligent individual and he has actually  
14 experienced the consequences of his behaviors, he certainly  
15 understands that he can't allow himself any false step or  
16 misstep, actually, if he were to be released. And he has  
17 expressed no desire to act out sexually. So I can't  
18 dismiss his position, his points entirely by just saying he  
19 is trying to manipulate people around himself to present  
20 himself as an insightful individual. I do think that he  
21 has gained insight in understanding, certainly into the  
22 nature of his sexual disorder and as well into what he is  
23 supposed to do if he were to be released back into the  
24 community.

25 Q. In light of your medical training and teaching, what's

1 your understanding of the biological process and changes to  
2 the male body between 60 and 75?

3 A. So, again, as I suggested before, I don't think that  
4 this -- his case, Mr. Schmidt's case, is the case of  
5 somebody who offended because he had just this unmet sexual  
6 need and sexual drive and had sex with children. That's  
7 not his case. That's not the case if you want to be driven  
8 just by testosterone, the male sex hormone. It's not the  
9 case of somebody who is acting out or has acted out  
10 sexually because he just cares less about the feelings and  
11 emotions of others and just does what he wants to do as you  
12 may see in a person who has an antisocial personality  
13 disorder. And it's not the case of somebody who acts out  
14 sexually because of drugs or alcohol. That being said,  
15 and, again, it's my opinion important to be mindful of the  
16 fact that Mr. Schmidt is indeed and that's the objective  
17 data he is 75 years of age, and people change with aging in  
18 terms of their stamina, in terms of their ability to  
19 function sexually. Even if his behaviors were not driven  
20 by sexual drive merely, people's desire for sex decreases.  
21 Their interest in sexual activity decreases with age. Even  
22 if they don't have the drive to act out or engage in sexual  
23 activity, their desire decreases. And so that is what I  
24 think has happened to Mr. Schmidt over the course of the  
25 last year, 15 years, that there was, as one would expect, a

1 steady decline in drive and desire and his presentation is  
2 the way he presents now today, somebody who had other  
3 objectives, other goals as he had when he was in his '40s,  
4 '50s or late '50s. And equating his presentation today  
5 with how he presented 15 plus years ago I think it would be  
6 just, again, in my opinion, an error because you can't  
7 disregard 15 years of somebody's life specifically in this  
8 age group. I mean if he were 35 years old and you were  
9 talking about a 50 year old individual today I would say,  
10 well, it may not be as relevant, the 15 years, because the  
11 ability to function has really not significantly changed.  
12 But going from 60 to 75, there is certainly a significant  
13 change in a person's biology and physiology.

14 Q. You heard Dr. Zinik's impression about Mr. Schmidt  
15 seems physically fit for his age. What's your thoughts on  
16 that?

17 A. Again, it's -- he seems fit certainly. He is not --  
18 doesn't look obese. He doesn't need a wheelchair to walk  
19 around, but that is not an assessment of a person's status  
20 to say, well, he seems fit. Again, I think one has to  
21 really think about what aging does to the body of an  
22 individual. And, again, I don't know if I have seen an  
23 image of Mr. Schmidt when he was in his '50s or '60s, but  
24 he looks certainly like an older individual, age 75. And  
25 so just equating looking physically fit to actually going

1 out and offending sexually against children I think, again,  
2 it's a stretch, in my judgment.

3 Q. Is stress offensive for somebody as small as Mr.  
4 Schmidt and 15 years of it impact the aging process?

5 A. Certainly there is something in the literature on  
6 stress and the speed of aging, so if I'm exposed to  
7 stressful events the speed of aging certainly increases.  
8 But at this point I don't know if he was stressed or the  
9 extent of the stress that he has been confined in prison  
10 but I just look at, again, the facts and the data before  
11 me, the objective data before me, and the objective data,  
12 as I said, he is 75 years of age. There is no evidence  
13 whatsoever of any sexual acting out or behavior over the  
14 last 15 years. No evidence of masturbation, erections,  
15 nothing whatsoever. In part that's expected. I mean  
16 that's what you would expect to see in somebody who is his  
17 age who has enlarged prostate, to see that there is this  
18 decline and shift in interest and desires.

19 Q. Is it important to your opinion that he doesn't suffer  
20 from antisocial personality disorder or a substance abuse?

21 A. I would say in part I would say certainly yes. And  
22 because he didn't suffer from either condition when he was  
23 in his '40s or '50s when he was actively offending. But  
24 certainly it's important if he, hypothetically speaking,  
25 were to present today with antisocial personality disorder

1 and substance use disorders, my opinion actually would be  
2 different. Because those vulnerabilities I would have to  
3 account for if he were to be released. In his case there  
4 is no such risk factor of him being antisocial in terms of  
5 the disorder or somebody with a substance use disorder.

6 Q. Is it important to your opinion that setting aside the  
7 paraphilic disorder, you found any other illness, assuming  
8 he had it.

9 A. Certainly. Sex offenders who present with pedophilic  
10 disorder and on top of the pedophilic disorder they have  
11 various mental health conditions, psychiatric disorders,  
12 and Mr. Schmidt does not present with any coexisting mental  
13 illness.

14 Q. Thank you. No further questions, Your Honor.

15 **THE COURT:** Any cross?

16 **MR. JAMES:** Yes, Your Honor.

17 CROSS-EXAMINATION

18 **BY MR. JAMES:**

19 Q. On page 11 of your report, which is Respondent's  
20 Exhibit Number 5, I believe, under your diagnostic opinion,  
21 you've testified here today that you did not find that Mr.  
22 Schmidt suffers from antisocial personality disorder,  
23 correct?

24 A. Right. He does not suffer from the disorder.

25 Q. But you did, in fact, find that he suffered from other

1 specified personality disorder with traits of antisocial  
2 personality disorder; is that correct?

3 A. As a result of the offending behaviors, yes, and the  
4 rule violations.

5 Q. So you did find a personality disorder then?

6 A. Right, but not the antisocial personality disorder.

7 Q. But you found -- the disorder he has has traits of  
8 antisocial personality disorder?

9 A. Yeah, based on his history -- yes, based on his  
10 criminal behaviors. That's the basis of the traits, yes.

11 Q. And those criminal behaviors include his offending  
12 while he was on supervision?

13 A. Sure, yes.

14 Q. Which, of course, is a dynamic risk factor; isn't that  
15 correct?

16 A. It's a risk factor if present, yes, sure.

17 Q. You've also found he suffered from unspecified  
18 paraphilia disorder. That's in reference to the pubescent  
19 boys?

20 A. Pubescent boys, yes.

21 Q. So that would be boys who were 14 years old?

22 A. It's actually you look at the stages of development.  
23 It's not just based on the age, but, yes, it would be  
24 pubescent kids, boys who have entered puberty.

25 Q. All right. And pubescent boys would be boys who would



1 start to have some body hair, secondary sex  
2 characteristics?

3 A. Yes.

4 Q. Now you read his deposition; is that correct?

5 A. I did, yes.

6 Q. And in his deposition he stated that he was sexually  
7 attracted to boys, and this is when he was in Southeast  
8 Asia, boys who were -- had smooth skin and a lack of body  
9 hair?

10 A. Right.

11 Q. And that would indicate prepubescence; isn't that  
12 correct?

13 A. That is incorrect. You don't diagnose or don't talk  
14 about puberty or somebody entering puberty whether they  
15 have just body hair or not. That's not the sole  
16 characteristic that you have to consider when you determine  
17 if somebody is entering puberty or not. So there are other  
18 factors that you consider when it comes to sexual  
19 development in boys.

20 Q. Well, one of those factors is in terms of prepubescent  
21 boys generally have smooth skin and they lack body hair?

22 A. That's true, yes, for prepubescent.

23 Q. Now you of course found Prong 1 and you did find Prong  
24 2. You found paraphilic disorder as well. And you would  
25 agree that the other disorder you found, the other

1 specified paraphilic disorder, that would also be a serious  
2 mental illness, abnormality or disorder?

3 A. It certainly would, yes.

4 Q. All right. And that in conjunction with the other  
5 specified personality disorder with reference to antisocial  
6 personality disorder in combination that would also be a  
7 serious mental illness, abnormality or disorder, in Mr.  
8 Schmidt's case?

9 A. I should say, as I stated earlier, he doesn't present  
10 with any of that for the last 15 years. So historically  
11 speaking certainly it's important to be looked at from a  
12 diagnostic perspective, but if I look at the case today,  
13 there is no evidence whatsoever in support of any  
14 antisocial personality disorder related traits.

15 Q. Now for the last 15 years he has been in prison, has  
16 he not?

17 A. Sure, yes.

18 Q. And in prison there are no outlets of -- there are no  
19 little boys?

20 A. There are no little boys. That I can safely say, yes.

21 Q. All right. Now isn't it true that in your review of  
22 the records and in your clinical interview with Mr. Schmidt  
23 he never told you and there's no record evidence of him  
24 ever acting out while he was doing his 18 year state  
25 sentence; isn't that correct?

1 A. That's correct, yes.

2 Q. So when he was doing his 18 year state sentence he was  
3 away from boys, right?

4 A. Yes.

5 Q. All right. He wasn't collecting pictures?

6 A. That's right, yes.

7 Q. He wasn't trying to have sex with inmates who appeared  
8 to be young?

9 A. As far as we know. There is no documentation, yes.

10 Q. He never spoke of any of that to you during his  
11 clinical interview either?

12 A. He did not, no.

13 Q. In fact in his testimony yesterday he was basically a  
14 model prisoner every time he has been incarcerated?

15 A. Yes.

16 Q. So that behavior when he was in prison 18 years is  
17 consistent with the same behavior he has had for the last  
18 15 years on his federal sentence; isn't that correct?

19 A. In part. Because, again, you are looking at it in my  
20 view in a vacuum. The fact is that, yes, he had continued  
21 to show appropriate behaviors in the prison system. Yet at  
22 the same token he is aging and is getting older, so he is  
23 not the 60 year old individual or the 35 year old  
24 individual, but he is a 75 year old individual. In five  
25 years he is going to be 80 and in ten years 85 years of

1 age.

2 Q. So you're basing -- correct me if I'm wrong -- you're  
3 basis your Prong 3 analysis mainly on the fact that he has  
4 aged 15 years from the time of the what we call the index  
5 offense to now, right?

6 A. Again, I -- the way I -- I think I agree with that  
7 certainly in part, but it's looking in my view at his case  
8 at the totality of the data before us. And, again, I have  
9 to consider the fact that he is aging and has aged over the  
10 course of the last 15 years. So you can't just equate Mr.  
11 Schmidt today with Mr. Schmidt in 2000 and say, well, this  
12 is exactly -- because that is ultimately the way one would  
13 have to think about this is that Mr. Schmidt today is  
14 exactly the same type of individual who he was in 2000 when  
15 he was arrested when he was overseas, and that's not the  
16 case. That's what, in my opinion, would be an error  
17 because he is not the same individual. He has  
18 significantly aged.

19 Q. Research shows that when an individual is 40 years  
20 old, that's when the decline begins, around age 40; is that  
21 correct?

22 A. Decline for what?

23 Q. Decline for sexual offending.

24 A. I mean there are three bodies of literature that we  
25 look at. One is the literature that addresses age and

1 sexual recidivism in the sex offender. Then there is the  
2 body of literature that looks at age and what age does to  
3 an individual being, with or without offending behaviors.

4 Q. The literature with regard to sex offenders, that's  
5 what I'm talking about.

6 A. Okay.

7 Q. Doesn't it say that the decline for recidivism begins  
8 around age 40?

9 A. That's right.

10 Q. Isn't that right?

11 A. That's correct, yes.

12 Q. And that would be a typical sex offender?

13 A. If there is any typical sex offender. That's what the  
14 literature shows.

15 Q. That's what the literature shows, right? Now at the  
16 age of 41 that's when Mr. Schmidt was first detected.

17 A. Right, yes.

18 Q. And there is evidence in the record that he continued  
19 to offend sexually when he was age 43, right?

20 A. Yes.

21 Q. And then he was convicted, spent 18 years in prison  
22 and was released when he was 57, right?

23 A. I don't think he spent 18 years in prison. He was  
24 released early on parole, but he was eventually released  
25 after being sentenced -- he received an 18 year sentence

1 but didn't do the whole 18 years.

2 Q. All right. He received a significant sentence and was  
3 released when he was 57 years old?

4 A. That's correct, yes.

5 Q. Now when he was 57 years old he began -- at a point  
6 when he should have been decreasing, right, in terms of the  
7 literature with regard to sex offending.

8 A. In general, if you talk in general terms, look at the  
9 core data, that's right. That's correct.

10 Q. And he then began violating his parole by associating  
11 with a minor, right?

12 A. That's correct, yes.

13 Q. Engaging in what you would agree would be grooming  
14 action; isn't that correct?

15 A. Yes, I would agree with that.

16 Q. And then that risk factor of violating supervision  
17 where he had fled the United States, right?

18 A. He fled the United States, yes.

19 Q. And when he was overseas in the Philippines when he  
20 was 60 years old he sexually offended against boys?

21 A. That's what we understand. Yes, he did.

22 Q. Then he was arrested in the Philippines for sexually  
23 offending against boys?

24 A. I think Cambodia, but --

25 Q. Well, he was arrested in the Philippines as well;

1 isn't that correct?

2 A. Actually, you're right. I think he was arrested in  
3 the Philippines and then made it over to Cambodia.

4 Q. Right. Then he went over to Cambodia. And in  
5 Cambodia again he sexually offended against boys even after  
6 he had been arrested?

7 A. I think he -- as far as I recall it at this point. I  
8 don't remember if he offended against boys or if he  
9 associated with a 15 year old boy. I don't remember the  
10 detail, but I certainly have to say that he engaged in  
11 behaviors that were certainly troublesome, if not criminal  
12 in nature.

13 Q. Wouldn't you agree that he was more of atypical sex  
14 offender than a typical one?

15 A. Actually, I disagree with the qualifier of typical or  
16 nontypical because there is no such thing in my opinion,  
17 first of all. Secondly, let's qualify his course. I mean  
18 he is and presented with a sexual disorder, has had sexual  
19 needs and engaged in behaviors to satisfy those needs. So  
20 I don't see that as being atypical for who he was, how he  
21 presented back then.

22 Q. And you don't believe if Mr. Schmidt was ordered to  
23 participate in sex offender treatment that would reduce his  
24 sexual dangerousness?

25 A. The way I would answer this is, I don't know if it

1 would reduce his risk per se. I don't think -- because I  
2 don't know how many years he is going to live, first of  
3 all, and who the provider is, what the treatment or the  
4 modality is that he would be subjected to. I don't know.  
5 I certainly don't see that as being detrimental for him to  
6 talk to somebody, to a therapist, but to necessarily reduce  
7 the risk merely because of him engaging in treatment or  
8 counseling, I don't think that that is what is going to  
9 ultimately reassure people that he is safe, that he is in  
10 treatment.

11 **MR. JAMES:** I'm getting ready to wrap up, Your Honor, with  
12 this witness.

13 Q. You would agree with me, would you not, that the type  
14 of molesting that Mr. Schmidt has engaged -- has self-  
15 reported does not involve the use of an erect penis. He's  
16 talking about the molestation, using his hands to caress  
17 and molest boys?

18 A. So molesting meaning touching, say, the child's  
19 private area?

20 Q. Yes. He has specified that he has touched their  
21 private area, he has rubbed them. He has been naked with  
22 them in the bed, body caressing.

23 A. Yes, sir.

24 Q. Whether or not Mr. Schmidt can actually gain an  
25 erection, he can do all of those things without an



1 erection?

2 A. But that's not the issue. But the answer would be  
3 true to what you said, but that's not the issue here. It's  
4 not about him having an erect penis or not an erect penis.  
5 Able to maintain or not maintaining an erection is really  
6 not what I'm talking about. But I agree certainly with  
7 your point that offending against a child does not require  
8 the offender or perpetrator to have a full penile erection.

9 **MR. JAMES:** I have no further questions, Your Honor.

10 **THE COURT:** All right. I'll recognize the witness as an  
11 expert and allow his opinions. I think you might have been  
12 here before.

13 **DR. SALEH:** I believe so, yes. Not in this room.

14 **THE COURT:** Not here, in Raleigh.

15 **DR. SALEH:** I was in Raleigh, yes, sir.

16 **THE COURT:** Okay. Thank you. We'll take a recess now  
17 until two o'clock and resume with your witness then.

18 **MR. TARLTON:** Yes, Your Honor.

19 (Lunch recess 12:47 - 2:07 p.m.)

20 **THE COURT:** Are you ready with your next witness?

21 **MR. TARLTON:** Yes, Your Honor. Our last witness is Dr.  
22 Plaud, Your Honor.

23 **DR. JOSEPH J. PLAUD, RESPONDENT'S WITNESS, SWORN**

24 DIRECT EXAMINATION

25 **DR. PLAUD:** Good afternoon, Judge.

1 **BY MR. TARLTON:**

2 Q. Good afternoon, Dr. Plaud.

3 A. Good afternoon.

4 Q. Under the meaning of the Adam Walsh Act, is Richard  
5 Schmidt sexually dangerous?

6 A. He is not.

7 Q. Why not?

8 A. As I've analyzed this case, Judge, over the last year  
9 or so, I've interviewed Mr. Schmidt two times, gone through  
10 all the data, the records. This is a very good case where  
11 the current status matters. And because of the current  
12 status, because of his current age, 75 years old, because  
13 of the fact that in his long term of incarceration, for the  
14 better part of 14 plus years in the federal system, there's  
15 no evidence of inability to control himself sexually. And  
16 because of the nature of his offending itself or in the  
17 course of it, I cannot conclude with any degree of  
18 credibility, of scientific psychological certainty that  
19 because of his diagnostic condition, that being pedophilic  
20 disorder, which I do diagnose in this case, that he would  
21 have at this time serious difficulty refraining from  
22 further acts of child molestation if he were released from  
23 custody at Butner. That's underscored and emphasized by  
24 the fact that he has lifetime supervision. Now, does Mr.  
25 Schmidt have issues? Yes. Some of them I have heard being

1 discussed here today in this court. Like Dr. Saleh, I  
2 diagnose Mr. Schmidt with a nonexclusive type of pedophilic  
3 disorder and for pretty much the same reason that I heard  
4 articulated earlier, meaning it is not clear to me by his  
5 own statements, which I have no reason not to judge because  
6 he is basically admitting to the essence of pedophilic  
7 disorder as a condition, but that it goes beyond the  
8 prepubescent area into pubescence. So I would diagnose him  
9 with a nonexclusive type of pedophilic disorder. It is in  
10 this case a necessary but not sufficient finding for the  
11 third prong in that as a 75 year old man released in 2018  
12 to the conditions of lifetime supervision with monitoring  
13 and treatment that he would have serious difficulty in  
14 refraining from further acts of child molestation. You  
15 just, in my judgment, can't go there given the data base.  
16 Clearly he has a long history of offending. I would note  
17 and it's difficult for me when I testify in these cases  
18 sometimes when they have conduct like we have in this case.  
19 As a psychologist who had done work in this area now for  
20 over 30 years, I've seen it all. And I mean all. As a  
21 Judge who has presided over many of these cases over the  
22 last almost coming up ten years now, so you've seen it all  
23 pretty much.

24 If we look topographically at Mr. Schmidt's conduct,  
25 he engaged in a number of acts over a number of years with

1 prepubescent/pubescent male children that was sexually  
2 abusive in nature. However, it was of a limited topography  
3 in a sense that it did not involve penetration, attempts at  
4 penetration or other types of sexual abuse that we see very  
5 often in individuals who have very difficult issues in the  
6 control of their sexual behavior if they are sexually  
7 aroused, It involves a modus operandi over the years in  
8 which Mr. Schmidt himself did not engage in sexual abuse by  
9 being what I would typically call a snatch and grab  
10 offender who would hang out in high risk situations: parks,  
11 playgrounds, schools and the like and find victims that  
12 way, on a whim, on an impulse. Again, which would  
13 correlate, I think, with lack of volitional capacity over  
14 his sexual impulses. He's not that type of offender, never  
15 has been. He has developed relationships. I think part of  
16 that has been in the context of his ongoing struggles  
17 through the years to understand himself emotionally and  
18 sexually. So you have a situation now where the guy is 75  
19 years old. He is not a behavioral problem. He is not  
20 motivated in any way by underlying psychopathic or  
21 sociopathic lifestyle orientation. He's not antisocial,  
22 he's not a rule breaker. He doesn't live for the purpose  
23 of defeating others or causing harm or injury or reckless  
24 disregard for their safety. That's not him, never has  
25 been. He has engaged in bad decision making repeatedly

1 when he was a younger person for many reasons, but I do not  
2 believe he was compulsively driven to engage in that  
3 behavior.

4 Fast forward. Now I have to make a judgment today.  
5 And to say that a man -- okay, he's in good health. I  
6 don't even know if I'm going to make it to 75. If I was in  
7 his health at age 75. I have trouble with my penis now.  
8 My medication list is bigger than his right now, so I  
9 understand the point. He's not in the worst shape  
10 physically that I've seen for a man who's 50 never mind 75.  
11 But you can't, therefore, dismiss the fact that he is 75  
12 years old. Because it's not only when you look at  
13 comparative research on recidivism and age, which some  
14 experts may discount for various reasons without any real  
15 good explanation I might add. But that's only looking  
16 backward. You have to look forward too. You have to look  
17 forward and say, how long does this guy realistically have  
18 to live. You know, we talk about actuarials and we kind of  
19 misapply them to the Static-99. It's not really an  
20 actuarial tool. It's a comparative statistical risk. But  
21 if you want to look at real actuarial data, the question  
22 is, well, how much longer has this guy got to live, period,  
23 regardless of how good his health is right now. You have  
24 to judge risk based on time going forward. So that's a big  
25 part. And that's why age is important regardless of trying

1 to discount it in the past. You have to go forward. This  
2 is about him today and tomorrow. If he was just to be  
3 reconvicted for what he has already served 14 years, then  
4 let's just do that. But this is about him going forward.  
5 So actuarial data in that sense means he's got a limited,  
6 constrained temporal period to go, even given his health  
7 status right now. When he's released he's not just going  
8 to be given a bus ticket and a pat on the head and send him  
9 on his way somewhere. He's going to have supervised  
10 release. And it's going to include monitoring. It's going  
11 to include treatment. And I do believe he needs treatment.  
12 And I want to see him have treatment. But I think the risk  
13 in this case here in 2018, given all that consideration, is  
14 best and most appropriately managed through that lifetime  
15 supervision with treatment and monitoring, period. If he  
16 was the type of offender historically who engaged in a lot  
17 of very risky sexually abusive behavior with lots of  
18 stranger victims, not developing relationships, engaging in  
19 a wide range of sexually abusive topographic behavior, I  
20 would temper some of my findings and remarks here. But  
21 he's not that way. And you can't discount the last 15  
22 years. So when you put all that together, does he meet  
23 Prong 1, yes. Does he have a serious mental illness,  
24 abnormality or disorder, yes, he does. Will that disorder  
25 in 2018 as we move forward, given his age of 75, given the

1 terms of supervision, given the history of his own  
2 offensive conduct, given the complete absence of any risk  
3 relevant behaviors in the last 14 years, which has figured  
4 in a number of appellate cases in these federal cases, the  
5 Antoine decision, the Wooden decision. I can't say that  
6 Mr. Schmidt has serious difficulty going forward in  
7 refraining, so he is not sexually dangerous. The data does  
8 not support that professional conclusion.

9 Q. Dr. Plaud, you heard the idea advanced today from Dr.  
10 Zinik that if he's not in contact with children he's in  
11 denial of his very essence or existence. What, if any,  
12 thoughts do you have about that assertion?

13 A. Pitch that to me another way. I want to make sure I  
14 get it.

15 Q. If he's not talking and around children then it's the  
16 denial of who he is at his core.

17 A. Well, look, he certainly engaged in cognitively  
18 distorted thinking over the years. What's interesting in  
19 the interview and in the interviews that I've read in other  
20 reports in this case, the other experts, as well as his  
21 testimony on the stand. He recognizes he had some serious,  
22 significant and pervasive thinking errors. He had  
23 cognitively distorted thinking. And he gave himself  
24 permission to engage in this behavior. He modified it a  
25 little bit as he got older, but he ultimately, even when he

1 brought it out of the country -- and I wonder if he didn't  
2 go out of the country, which he will never be able to do  
3 going forward again. He won't be able to. There's a zero  
4 percent chance he's going to leave the United States of  
5 America if he walks out of these two front doors today,  
6 zero. Well, the question is, even if you go back 15 plus  
7 years, the nature of his distorted thinking and his pattern  
8 of abusive conduct, absent that going out to Cambodia, to  
9 the Philippines, would he have even engaged in that  
10 behavior here. And I have my doubts. Fifteen years ago.  
11 But what happened, changed environments dramatically,  
12 entire situation. The cultural situation is so much  
13 different over there. That's why people -- offenders have  
14 taken advantage of that situation in ways they couldn't and  
15 wouldn't here in America. That's precluded from his future  
16 under supervised release. If he gets supervised release he  
17 has to have a passport and they stamp your passport now if  
18 you're a sex offender, even if you had one.

19 So the situation has to be based on what are the  
20 relevant risk factors going forward 2018 and beyond. And  
21 if you look past the actuarial, then we only have a limited  
22 time window here to deal with in terms of going forward and  
23 our risk analysis is a fact that he, Mr. Schmidt, has  
24 engaged in cognitively distorted thinking, and he  
25 recognizes the basis of some of that distorted thinking.



1 He understands for whatever reasons. We could sit here and  
2 argue this for days why he is the way he is, but at the end  
3 of the analysis, that's not really -- that's up for  
4 therapists and God to figure out. The question is risk.  
5 And he will have treatment to continue to address those  
6 cognitive distortions as he moves forward under a lifetime  
7 supervised release, period.

8 Q. In your reports you distinguish from an opportunistic  
9 history versus compulsively driven history. Can you  
10 elaborate on that a little bit?

11 A. Yeah. Look, I think every expert I've heard testimony  
12 in this case, I've heard the Judge talk a bit about this  
13 and think about this as he tries to conceptualize this  
14 case. But what's up with this guy? I mean he wasn't  
15 abused as a child himself, by his own admission. So many  
16 of these clients are. We can use that maybe as a  
17 touchstone for why they started engaging in this behavior.  
18 I mean he clearly is and I think we all agree  
19 diagnostically that he is somehow fixated in this  
20 prepubescent to pubescent range of sexual sex, secondary  
21 sex characteristics that are basically below the age of 18  
22 years old. And treatment obviously will be addressed for  
23 him to try to explore that further and figure out why, but  
24 he is fixed in that sense, yes. And I don't think there is  
25 any -- we can quibble a little with the parts of the

1 diagnoses that we make in terms of whether it is exclusive  
2 or not, the pedophilic disorder. But we all agree. I mean  
3 I agree as much as anybody that he has this disorder for  
4 whatever the reason or reasons are. The question is, he's  
5 not -- these issues in the past have been opportunistic for  
6 him. He's had this underlying condition. He's been in  
7 positions, whether that be through seeing himself as a  
8 mentor or teacher where he has been able to groom victims  
9 over periods of time. And when you load up your risk  
10 factors, you add time in it and lack of supervision and  
11 you're still acting on your cognitive distortions,  
12 sometimes further offenses happen, and they certainly did  
13 in this case. The question is, will that scenario, that  
14 situation, that environment, going forward in 2018 and  
15 beyond even have the remotest possibility of being  
16 recreated. I don't think so. So, again, I don't look at  
17 it as compulsively driven, but he took advantage of  
18 opportunities that were consistent with his underlying  
19 sexual behavior.

20 Q. Would it be fair to say that the deterrence of being  
21 essentially subject to another civil commitment hearing  
22 would actually mean something to Mr. Schmidt if he violated  
23 his supervised release?

24 A. Yeah, he's clearly aware of it. I mean he's -- look,  
25 there's quite a range of intellectual abilities by the

1 clients that I deal with in these SDP cases, whether that's  
2 federal or state cases. Most of them I would say, in my  
3 judgment, are kind of on the mid to lower end of the  
4 spectrum when it comes to means and analyses, cognitive  
5 functioning, intellectual capabilities and attainments.  
6 Mr. Schmidt is on the higher end of that. He certainly  
7 clearly understands where he's at, where he needs to go  
8 and what he needs to do going forward. To my mind, does he  
9 understand everything about himself sexually, no. But  
10 that's what our patient treatment will do to help him as he  
11 moves forward. He certainly does have an understanding of  
12 the cognitive distortions that have motivated or propelled  
13 his sexual abusive behavior in the past, and he has  
14 articulated some of that when he was on the witness stand.  
15 We talked about it in my interviews, my two interviews with  
16 him, and I've seen it reflected in other expert reports.

17 Q. Dr. Zinik opined that he has a paraphilia or subset  
18 that makes him a much greater risk than other folks that  
19 suffer from the same paraphilia, generally speaking. What  
20 are your thoughts on that?

21 A. Well, if I got his testimony correct, my memory of it  
22 was not that he had another paraphilia but that that he is  
23 a nonexclusive type, which I don't diagnose. But assuming  
24 that's correct that that would automatically make you  
25 riskier. Now that's not necessarily true. As a matter of

1 fact I've been in many cases where they argue just the  
2 opposite. Well, if a person has access to a wife or a  
3 girlfriend or somebody who is normative and they're still  
4 offending, that makes them an even higher risk. So they  
5 want to have it both ways. No, it's not that case. First  
6 of all, he's not exclusive, so I disagree with the premise.  
7 But beyond the premise, no, I disagree with that analysis  
8 that makes him a higher risk per se.

9 Q. With his diagnosis if he actually had a volitional  
10 impairment, what would you have expected to see in the last  
11 14 years or so while he has been incarcerated

12 A. Well, I would have expected -- even going back further  
13 than 14 years, I would have expected a different pattern of  
14 offending throughout his life, first of all. But in the  
15 last 14 years, again, there is no evidence that he is  
16 compelled, driven, to engage in behavior that involves  
17 sexual gratification surrounding any issue involving  
18 pubescent or prepubescent age children, none. So he's  
19 clearly controlling himself. Now, it's not in the  
20 community but, again, how many cases have we had. These  
21 guys are up to all kinds of shenanigans back there that are  
22 a direct or indirect expression of ongoing difficulties in  
23 controlling themselves sexually. He's not doing any of  
24 that, never has.

25 Q. You reviewed probation's letter about his release

1 conditions?

2 A. Yeah. I think I quoted some of it in my report, if I  
3 remember correctly, yeah. I was very interested to see  
4 what, in this case it was a very important part of my  
5 analysis in this case concerning his terms of supervised  
6 release.

7 Q. And even the recommendation about placement in a  
8 halfway house?

9 A. Yes.

10 Q. They would help arrange that?

11 A. Correct.

12 Q. Do you agree with that?

13 A. I do.

14 Q. Are there any other thoughts that you have that this  
15 Court should know about this case?

16 A. Well, I don't think he's sexually dangerous. That's  
17 my professional opinion because we're basing this on 2018  
18 going forward. For a 75 year old man with his offense  
19 history, with no institutional issues who's got a lifetime  
20 term of supervised release with very strong conditions. It  
21 is not -- in no way is a 75 year old man, opine in the  
22 affirmative, given an absence of dynamic risk factors  
23 present today, that he is going to reoffend.

24 Q. Okay.

25 **MR. TARLTON:** No further questions, Your Honor.

1       **THE COURT:** All right. Any cross?

2       **MR. JAMES:** Yes, sir, thank you.

3                               CROSS-EXAMINATION

4       **BY MR. JAMES:**

5       Q. Dr. Plaud, I believe you opined a few moments ago that  
6       one of the factors that you considered was the fact that he  
7       would have placement in a halfway house?

8       A. It was in the record, that's correct.

9       Q. That was in the record.

10      A. Yes.

11      Q. Now, placement in a halfway house was something that  
12      was also recommended during his last day in court  
13      convictions; is that correct?

14      A. That's right. I'm well aware of that. I think I  
15      point that out too somewhere, about supervised release  
16      issues in the past, yes.

17      Q. Now you cite the fact during the course of your  
18      testimony that -- you reference the time that Mr. Schmidt  
19      has been in prison in the last 14 years as being one of the  
20      factors that you consider to be important as to why he  
21      would not be sexually dangerous under Prong 3?

22      A. Correct.

23      Q. Of course, as you noted, his victim pool is not in  
24      prison, obviously?

25      A. Correct.

1 Q. Correct?

2 A. Correct.

3 Q. Now with regard to his emotional congruence with  
4 children, do you believe that is a factor, a risk factor  
5 with him?

6 A. Well, I love these terms, emotional congruence with  
7 children. I diagnosed him with a pedophilic disorder, so I  
8 think that's the more important conclusion. Yes, he does  
9 have an emotional congruence with children. He's got a  
10 paraphilia disorder.

11 Q. All right. So your answer is yes?

12 A. Yes.

13 Q. All right. Now, in your interview with Mr. Schmidt  
14 and your review of the record, obviously indicates that he  
15 spent from '87 to 2000 incarcerated, right?

16 A. Correct.

17 Q. And in your clinical interview and your review of the  
18 records, there was nothing showing that although he has  
19 this emotional congruence with children he was without an  
20 ability to be with children that he acted out in any  
21 manner?

22 A. I think I pointed that out in my direct testimony.  
23 Never in any of his incarcerations have I seen any evidence  
24 of this.

25 Q. Right. And that's similar to his current

1 incarceration?

2 A. Correct.

3 Q. And all of his incarcerations?

4 A. Everyone of them that I have any records of, that's  
5 right.

6 Q. Now you were asked -- there was some questions  
7 regarding opportunistic sexual offenders and compulsive  
8 sexual offenders?

9 A. Yeah, I think it's critical, yes.

10 Q. And in fact you know that many child molesters are  
11 patient. They groom children, as Mr. Schmidt has done.

12 A. I would say probably most offenders have grooming  
13 types of behaviors that you've described, yes.

14 Q. They ingratiate themselves with the childrens' parents  
15 as Mr. Schmidt has done?

16 A. In the past, correct.

17 Q. And they are sex offenders; isn't that correct?  
18 They are still offending sexually?

19 A. Yes, they are. And that goes into my calculus and it  
20 underscores I think what is not a risk factor in this case.  
21 And that is he will not have the opportunity, even if that  
22 was still present as it was decades ago, and I don't  
23 believe it is, but for the sake of argument since you  
24 brought it up in your question, say it was. He will not  
25 have the opportunity to engage in that grooming type of



1 predation given the situation that will be in effect once  
2 he is released in 2018. It's a different situation. And I  
3 have my doubts whether he would have done it if not for him  
4 relocating outside the country back after 2000.

5 Q. Well, back to the first part of your response, you  
6 have not been in contact with the probation officer  
7 yourself; is that correct?

8 A. No, I just summarized his records.

9 Q. Okay. And in fact you have no way of knowing how the  
10 probation officer in Maryland would be able to supervise  
11 him; is that correct?

12 A. I don't have any firsthand knowledge of anything other  
13 than my general knowledge of how supervised release works  
14 and the specific information that was composed and  
15 memorialized by his probation officer.

16 Q. And using your generalized knowledge of supervised  
17 release you know that probation officers aren't stationed  
18 outside someone's home 24/7?

19 A. No, but he will be wearing an ankle bracelet. He will  
20 be monitored 24/7 on an ankle bracelet.

21 Q. Well, the ankle -- you understand, of course, that the  
22 ankle bracelet will just say the location where someone is?

23 A. Yes.

24 Q. If it works properly, right?

25 A. That's what it's designed to do.

1 Q. It wouldn't indicate whether he was staying at his  
2 home and a 12 year old boy that he has ingratiated himself  
3 by meeting the boy's family, that boy comes over to his  
4 home. Is that correct?

5 A. It would not.

6 Q. Now you talked about Mr. Schmidt evidencing some  
7 cognitive distortion.

8 A. Cognitive distortion, yes.

9 Q. And you read his deposition?

10 A. I did.

11 Q. In fact, you read his deposition before you prepared  
12 the second report?

13 A. I did.

14 Q. All right. And on page 45 of his deposition, I was  
15 asking Mr. Schmidt about the victim from -- the first  
16 lacrosse victim, I'll call him that, the boy who played  
17 lacrosse and Mr. Schmidt sponsored or partly sponsored the  
18 team.

19 A. That is my understanding.

20 Q. And I was asking Mr. Schmidt how did this boy come  
21 from being a boy who came to the store to winding up in Mr.  
22 Schmidt's home.

23 A. Uh-hum.

24 Q. And my question was on page 45, line 18, question:

25 All right. So I'm trying to get from how he comes to you

1 in that context that he winds up at your place. So what --  
2 what do you say to him? What do you -- what do you do with  
3 him? How did he get there?

4 Mr. Schmidt's response: Well, he was very friendly.  
5 We became friendly during that period of time. And he was  
6 interested in being with me, so I invited him to my house.

7 Question: How did he express his interest in being  
8 with you?

9 Answer on page 46. line 1: Just by asking if he could  
10 come to the store and showing a general interest. Then the  
11 next sentence: During that period of time, I was not  
12 involved with anybody else and he was friendly and  
13 interested.

14 Isn't that cognitive distortion, thinking just because  
15 the boy comes to the store that the boy is sexually  
16 interested in him?

17 A. Could be.

18 Q. And that was -- the deposition was taken on the 25th  
19 day of April of 2017.

20 A. I don't remember the date. I'll take your word for  
21 it.

22 Q. Well, it's Exhibit Number 17 in the exhibits.

23 Now, during the course of your interview with Mr.  
24 Schmidt I believe you noted that with regard to sexual  
25 fantasies he told you that he occasionally still had sexual

1 fantasies about teenage boys?

2 A. Yes.

3 Q. Is that correct?

4 A. Yes, he did say that to me. Exactly, yes.

5 Q. And with regard to your report, on page 4 of your  
6 report you looked at some of the BOP factors and one of the  
7 factors you noted in your report -- in your report you had  
8 a gap between 19-- I'm talking about number 2, by the way.

9 A. Okay. Thank you.

10 Q. And under the conclusion you had a reference to the  
11 gap between 1960 and 1984, a 24 year of potentially time in  
12 the community.

13 A. Right.

14 Q. Now you read his deposition and you know that that is  
15 incorrect, in reading his deposition; isn't that correct?

16 A. Uhm --

17 Q. Let me rephrase it. Isn't it true that during the  
18 course of his deposition Mr. Schmidt testified in his  
19 deposition that between '73 and '79 when he was teaching,  
20 right --

21 A. Right.

22 Q. -- between 1973 and '79 he was still engaging in  
23 sexual contact with boys.

24 A. Right.

25 Q. So there wasn't a gap between 1960 and 1984 in which

1 he wasn't engaging in sexual offenses.

2 A. That's not my point. That's not why I say that. I  
3 agree with you factually, but I'm talking about detection.  
4 The issue is -- one of the big issues and this is reflected  
5 in the Static-99 and other actuarial tools, another risk  
6 assessment procedures is -- we oftentimes use the term  
7 cluster offenses, is the actual intervention by law  
8 enforcement, whether that involves arrest, trial,  
9 conviction, but even arrest seems to be a significant  
10 factor. So an individual's engaging behavior for which  
11 they are not being detected, there are other issues that we  
12 have to consider. So I'm really referencing that fact,  
13 that it was not the intervention of the legal system until  
14 much later.

15 Q. Now Mr. Schmidt told that you he had engaged in sexual  
16 activity with five or six males in the Philippines and in  
17 Cambodia?

18 A. Yes. I did go into trying to find out if there was  
19 any additional victims, correct. That's my memory of what  
20 he told me, yes.

21 **MR. JAMES:** One moment, Your Honor.

22 Q. When Mr. Schmidt testified today he stated that -- you  
23 recall him testifying that he was aware that his activities  
24 in 2000, the boy in 2000, was cause for a warrant?

25 A. That's my recollection, yes.

1 Q. And despite being aware of that, he still engaged in  
2 sexual activities with boys -- when he was in Cambodia and  
3 the Philippines he engaged in sexual activity with boys?

4 A. He did.

5 Q. And Mr. Schmidt's testimony about his self-awareness  
6 today would be the same as what he testified to in 2000?

7 A. I'm not prepared to make that conclusion. Certainly  
8 he has had a decade and a half more to dwell upon these  
9 issues. I think his understanding is probably much more  
10 acute today than it was back then. You can't just make 15  
11 years magically disappear here. And that's why I'm very  
12 pleased and would recommend that he receive ongoing  
13 outpatient based sex offender treatment when he is released  
14 under the terms of lifetime supervised release.

15 Q. Did Mr. Schmidt indicate to you he had had any sex  
16 offender treatment?

17 A. I went over with him what I went over with you in  
18 terms of what his terms were. He indicated to me that he  
19 would comply as best he could with all the terms of his  
20 supervision, including engaging in outpatient sex offender  
21 treatment, yes.

22 Q. Do you believe that -- well, you heard Dr. Saleh's  
23 testimony that he didn't believe that sex offender  
24 treatment alone, outside of supervision, would be  
25 sufficient for Mr. Schmidt because Mr. Schmidt doesn't

1 appear to be amenable to sex offender treatment because of  
2 his ingrained (inaudible).

3 A. I didn't hear the testimony that way. Sex offender  
4 treatment for the most part doesn't change. Now, there are  
5 some behavioral techniques. In fact, I've worked on them  
6 and published on them myself, but for the most part the  
7 vast majority of issues we deal with in sex offender  
8 treatment, it's not to change the underlying sexual  
9 expression of the person, the underlying sexual impulses.  
10 What it is is to teach them behavioral, cognitive and  
11 behavioral skills to be able to make better decisions when  
12 they are confronted with risk relevant situations. That's  
13 the essence of relapse prevention. And so that's what I  
14 would talk about. I don't think if he underwent treatment  
15 at Butner or in the community it's going to magically  
16 change what his sexual interests are. He admitted to me  
17 during the interview within the last months that he still  
18 has sexual fantasies about teenage boys. So he's not even  
19 trying to cover it up or hide it. But he understands he  
20 can't do it. This is about the doing, not what he is. He  
21 is what he is for whatever the reasons are. It's about not  
22 acting on it. That's what this is about. What's the  
23 likelihood that he is going to act on it going forward in  
24 time as a 75 year old man with all these conditions on him  
25 who has an understanding that what he has done is wrong.

1 That's the question.

2 Q. When you look at Mr. Schmidt's compliance with rules  
3 and regulations, he has violated probation and parole,  
4 every single judge's order that he not engage in behavior  
5 while he is on probation and parole. At least with regard  
6 to children he has violated that.

7 A. I point that out. I'm well aware of it, yes. But  
8 that's then; this is now.

9 **MR. JAMES:** No further questions, Your Honor.

10 **THE COURT:** Any redirect?

11 **MR. TARLTON:** Nothing further, Your Honor.

12 **THE COURT:** Thank you, Doctor. Any other witnesses?

13 **MR. TARLTON:** No, Your Honor.

14 **THE COURT:** Okay. You had a motion to dismiss for statute  
15 of limitations?

16 **MR. TARLTON:** That's right, Your Honor. I've looked at the  
17 (inaudible) argument back in October.

18 **THE COURT:** In the Supreme Court or the Fourth Circuit?

19 **MR. TARLTON:** Fourth Circuit, Your Honor, a three judge  
20 panel.

21 **THE COURT:** The claim is that when the first incarceration  
22 or in this case when the 2001 or 2002 incarceration  
23 happened that the Government was put to the test of  
24 choosing to civilly commit him or making him subject to  
25 civil commitment or else they lose that?



1 **MR. TARLTON:** At least that's when the accrual begins, that  
2 they had the statute in effect and the accrual begins  
3 because frankly the certification is based on the PSR. So  
4 they had all the information present.

5 **THE COURT:** Well, there wasn't an Adam Walsh Act at the  
6 time.

7 **MR. TARLTON:** After 2006 there was. It accrued once the  
8 Adam Walsh Act came into effect and they had sufficient  
9 information to do the diagnosis. That's the arguments that  
10 were advanced on behalf of Mr. Searcy in the Fourth  
11 Circuit.

12 **THE COURT:** And who is litigating that?

13 **MR. TARLTON:** Eric Brignac in the Federal Defender's office  
14 is the --

15 **THE COURT:** In your office?

16 **MR. TARLTON:** No, in the Federal Public Defender's Office.

17 **THE COURT:** In the Eastern District?

18 **MR. TARLTON:** Yes, Your Honor.

19 **THE COURT:** Well, it would have to be here. We've got all  
20 the cases.

21 **MR. TARLTON:** There is a period time line. I think it's  
22 five years or four years is the statute that governs civil  
23 actions. And then it's just the outcome -- this is a civil  
24 regime. And the statute applies absent some express  
25 language to the contrary.

1       **THE COURT:** Who ruled on that, which Judge?

2       **MR. JAMES:** The initial ruling on Searcy was a Flanagan  
3 case.

4       **THE COURT:** Judge Flanagan.

5       **MR. JAMES:** Judge Flanagan. And oral argument in that case  
6 was held in October of 2016.

7       **THE COURT:** Is there a statute of limitations?

8       **MR. JAMES:** Our argument there is not. That it does not  
9 apply to Adam Walsh Act cases. That's our argument before  
10 the Fourth Circuit.

11       **THE COURT:** Without getting into detail, why is that,  
12 because you can't deny that it's a civil action.

13       **MR. JAMES:** Right. But when you look at the civil  
14 commitment schemes -- normally the civil actions in which  
15 the statute of limitations apply, they are designed to put  
16 a plaintiff on notice and also allow a defendant to either  
17 --

18       **THE COURT:** Yeah, I know the process and I would think that  
19 if anything once you had to make a decision about  
20 certification that that might run the statute of  
21 limitations, but not until a person was put to the  
22 certification.

23       **MR. JAMES:** That came up during oral arguments, Your Honor.  
24 That came up -- I can't remember the appellate judge.

25       **THE COURT:** Thacker or Harris?

1 **MR. JAMES:** I believe it was Judge Harris who posed that  
2 question. And during the precertification evaluation  
3 process, specifically in the Searcy case, well, he provided  
4 new information. And so the only issue was the accrual  
5 date. He provided new information. If I remember  
6 correctly Mr. Searcy admitted something he had never  
7 admitted before about molesting one of the victims, and  
8 that was also new information.

9 **THE COURT:** Well, you don't know whether you're going to be  
10 certified until the certification decision comes down.

11 **MR. JAMES:** That's true.

12 **THE COURT:** So how can -- a hundred percent of the people  
13 who are examined -- we've had somebody here from Washington  
14 in one of these cases who said we look at 5,000 and we pick  
15 out 50.

16 **MR. JAMES:** That's correct, Judge. I know the case. I  
17 think it was the Goodpasture case. But, you're correct.  
18 They look at between 18 and 24 months before it expires for  
19 release from imprisonment. They look at that whole body of  
20 prisoners who fall within that range. And then they pare  
21 out those who have convictions, primarily convictions.  
22 And if you have one conviction, let's say, a 601  
23 conviction, if that's all he has he will be excluded from  
24 consideration. If the person has two convictions and he  
25 may have a disagreement between the bureau and a

1 psychologist they will bring in a third psychologist to  
2 examine that.

3 **THE COURT:** Well, Mr. Schmidt in this case was certified  
4 when, in what year?

5 **MR. TARLTON:** April 13, 2016, Your Honor.

6 **THE COURT:** So this is the hearing and certification is  
7 within four years of --

8 **MR. TARLTON:** Well within that, yes.

9 **THE COURT:** Well within that?

10 I'm going to deny the statute of limitations challenge.

11 **MR. TARLTON:** Yes, Your Honor.

12 **THE COURT:** And I'll review everything and give you a  
13 written order. No, we're not finished yet, right. You  
14 have another witness.

15 **MR. JAMES:** We have another witness.

16 **THE COURT:** And I'm prepared to hear that witness, if it's  
17 convenient, on the morning of January 24th, which is a  
18 Wednesday in Raleigh at ten o'clock.

19 **MR. JAMES:** We will let that witness know, Judge. One  
20 other thing, if we haven't done so already, I know we  
21 stipulated to all the experts, and the Court made mention  
22 accepting a number of experts. We are, of course,  
23 tendering Dr. Watkins as well.

24 **THE COURT:** Yes, I'll accept her as an expert.

25 **THE COURT:** All right. We'll resume. I guess he'll need

1 to be there for that testimony, but we will just continue  
2 the remainder of the trial until that day.

3 **MR. TARLTON:** Yes, Your Honor. Your Honor, what is the  
4 specific date?

5 **THE COURT:** The 24th, which is a Wednesday.

6 **MR. JAMES:** May I approach. We did file yesterday -- was  
7 it this morning -- this morning a notice to the Court of  
8 proposed dates.

9 (Counsel confer)

10 **MR. TARLTON:** I just wasn't available in February.

11 **MR. JAMES:** Would the Court allow us to contact the Court  
12 with regard to January 24th?

13 **THE COURT:** Yes. I'm just advising you that I will be  
14 available on the 24th, the 25th or the 26th in Raleigh.  
15 And we won't need to come back here to Elizabeth City that  
16 way. And if you find a time that's convenient for your  
17 witness we'll do it then.

18 **MR. JAMES:** Okay. Thank you, Judge.

19 **THE COURT:** Thank you. We'll be in recess.

20 Court recess 2:49 p.m.  
21  
22  
23  
24  
25

STATE OF NORTH CAROLINA                    )  
  ) C-E-R-T-I-F-I-C-A-T-I-O-N  
COUNTY OF PERQUIMANS                    )

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

<u><i>Sandra A. Graham, CVR-M</i></u>	<u><i>January 21, 2018</i></u>
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